OFFICIAL REPORT
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 31 October 2018**

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

# Wednesday 31 October 2018

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## LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
**29th Meeting 2018, Session 5**

**CONVENER**

*James Dornan (Glasgow Cathcart) (SNP)

**DEPUTY CONVENER**

*Monica Lennon (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

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

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jeremy Balfour (Lothian) (Con)
Claudia Beamish (South Scotland) (Lab)
Alex Cole-Hamilton (Edinburgh Western) (LD)
Mary Fee (West Scotland) (Lab)
John Finnie (Highlands and Islands) (Green)
Patrick Harvie (Glasgow) (Green)
Mark Ruskell (Mid Scotland and Fife) (Green)
Kevin Stewart (Minister for Local Government, Housing and Planning)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Robert Burns Room (CR1)

# Scottish Parliament

## Local Government and Communities Committee

*Wednesday 31 October 2018*

*[The Convener opened the meeting at 09:15]*

## Decision on Taking Business in Private

**The Convener (James Dornan):** I welcome everyone to the 29th meeting in 2018 of the Local Government and Communities Committee. I remind all present that they should turn off their mobile phones. As meeting papers are provided in digital format, members may use tablets during the meeting.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take in private item 4, on pre-budget scrutiny, and item 5, which relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill?

**Members** *indicated agreement.*

## Planning (Scotland) Bill: Stage 2

09:16

**The Convener:** Agenda item 2 is day 5 of stage 2 of the Planning (Scotland) Bill. I welcome to the meeting the Minister for Local Government, Housing and Planning, Kevin Stewart, and his officials. Some MSPs who are not committee members but who have lodged amendments to the bill will also be attending, and they are very welcome to the meeting.

### After section 14

**The Convener:** Amendment 257, in the name of the minister, is grouped with amendments 145 to 147.

**The Minister for Local Government, Housing and Planning (Kevin Stewart):** Good morning, convener. This group of amendments relates to a planning authority's ability to refuse to even deal with an application. The current provisions are contained in section 39 of the Town and Country Planning (Scotland) Act 1997.

The power applies where, within the previous two years, a similar application was refused by Scottish ministers as a result of a call-in or appeal or by the planning authority on local review, or where, in the absence of such appeal or review decisions, the planning authority has refused two previous similar applications. In this context, a "similar application" is one where the land and the proposal are the same or are substantially the same. The other criterion that applies is that there has been no

"significant change in the development plan",

as far as it is relevant to the case,

"or in any other material consideration".

That ensures that the decision is based on planning considerations and is not arbitrary.

I appreciate that there can be concerns in communities where the same or similar proposals for a site keep being submitted as applications despite previous refusal of permission. However, a second application can, in some circumstances, serve a useful purpose by proposing changes to a development that address the original grounds for refusal. As a proposal cannot be varied on appeal, that might be the best way of making an application better.

We also need to bear in mind that the planning system can, in the public interest, prevent a person from developing their land. As that affects their human rights, we need to be careful how we restrict their access to the decision-making process. There is no planning appeal procedure

where a planning authority declines to determine an application.

Taking those issues into account, amendment 257 seeks to extend from the current two years to five years the period within which the power to decline to determine can apply. It is a significant extension; indeed, it more than doubles the time. Claudia Beamish's amendment 145 would extend the period from two to 10 years.

The amendments will not change the position that authorities cannot decline to determine an application where there has been a significant change in the development plan or in other material considerations. However, that means that the original grounds for refusal have to be revisited in the light of the current position—indeed, they might no longer apply—and the planning authority will have to reach a considered and reasonable judgment on whether there have been any significant changes in circumstances. That does not mean reaching a view that the authority would make the same decision again—that would require the application to be processed and the position considered anew.

The longer the time since the original decision, the more likely it will be that some material consideration will have changed, and the more difficult it will be for the planning authority to be certain about whether there has been such a change. If it cannot be certain, it will have to process the application. It is not reasonable to suppose that circumstances will not change substantially over a period of 10 years and therefore it is unlikely that any cases could be declined at that timescale. I believe that a five-year period represents a more reasonable extension to the times involved.

Amendment 145 would also remove the right to make one similar application after a refusal before the ability to decline to determine applies. As I have said, I believe that a second application can be helpful in addressing concerns that have been raised, so I do not support such a provision.

Amendment 146 would require Scottish ministers to publish guidance on interpreting the definition of a "similar application", and on what constitutes a "significant change" as regards the development plan and other material considerations. As I said in relation to a previous amendment, guidance cannot change the meaning of legislation; interpretation is a matter for the courts. In any case, guidance could not usefully address all the possible issues that might arise in every type of case.

Amendment 147 would introduce a specific power allowing ministers to introduce regulations to charge a higher fee for similar applications. Currently, fee regulations allow a zero fee where an applicant submits a largely similar application within 12 months of a decision on the previous application. We have already indicated our intention to reconsider the so-called free go in the fees review following the bill. However, given that planning fees are in principle about cost recovery, there is no obvious basis for charging a higher-than-standard fee for repeat applications, which can often serve a useful purpose.

We propose to impose a surcharge over and above the fee payable for a retrospective planning application. In such cases, however, there is a breach of planning control and the surcharge is in effect a penalty rather than a charge that relates to the cost of processing the application.

I therefore ask Claudia Beamish not to move her amendments in this group.

I move amendment 257.

**Claudia Beamish (South Scotland) (Lab):** Good morning. Amendment 145 aims to increase from two years to 10 years the time period that local authorities would have to deal with multiple similar applications for the same development. It also aims to ensure that the local authority has the discretion to decline to determine a second application within a 10-year period if it is deemed to be similar.

As the minister has already highlighted, section 39 of the 1997 act means that even if planning authorities have refused a planning application, they are usually obliged to deal with a second application for the same development, whether it is submitted a few months or a few years later. Planning authorities are unable to decline to determine the second application unless ministers have refused permission for development within the past two years.

The current "more than one" stipulation allows developers an opportunity to submit a second application within 12 months of their original application being refused. The local authority is obliged to deal with that second application. It is only when a third application is submitted that local authorities can decline to determine it.

That inability to decline to determine the second application is often referred to by community groups as a "free go" for the developer. Amendment 145 will give the planning authority the power to decline to determine the second application if it considers that appropriate. I note the minister's comments on that, but I still wish to pursue the proposal in order to provide, from the perspective of communities, a more balanced approach.

The need for such an approach is even more pertinent when we consider that, at present, depending on the timing of the two previous

applications, the planning authority may decline to determine a third application. If a third application is submitted more than two years after the original application was refused, the planning authority has to deal with it, and the process starts again. For communities, that leads to a war of attrition in some cases.

If the timescale in section 39 of the 1997 act remains two years, there will be the potential for the three-year application cycle to start every couple of years. Amendment 145, in my name, would extend the timescale to 10 years. I note that the minister has recognised the burden that the current timescale places on communities and that amendment 257 proposes an increase from two to five years, but I do not think that five years is long enough.

I note the minister's comments about human rights. In my view, there is a human rights aspect for communities as well as for developers, and that needs to be considered. In addition, I think that I am correct in saying that amendment 257 does not address the developer's opportunity to have a free go within 12 months by submitting a similar application.

By increasing the restriction on similar applications and changing the timescale from two years to 10, and by giving the local authority more scope to decline to determine applications, we would prevent local authorities and communities from being constantly worn down by repeat applications.

In my area, a developer who was first refused planning permission in 2009 subsequently submitted two further applications for the same site and has recently appealed in relation to a third application. The community has experienced nearly 10 years of relentless pursuit of the site. I have experience of the issue as a community activist, too, because for seven years I was involved in fighting applications for inappropriate opencast activity.

The current process prevents communities from moving on when there is the threat that previously rejected unsuitable proposals will return. The uncertainty that the current situation creates can affect investment in the area.

Consideration must also be given to the money that planning departments must spend on reviewing subsequent applications.

Over the years, I have raised the issue with the Scottish Government a number of times. In 2015 I met Alex Neil in an attempt to address the frequency issue, but I am sad to say that there was no appetite to change the timescale at that stage. I hope that we can make the change in the bill; I recognise that the minister has moved on the issue since our discussions before the summer recess.

In its stage 1 report on the bill, the committee noted, in relation to local development plans:

"we are content with the proposals to move to a 10 year cycle",

the aim of which is

"to provide for greater connection between the LDP and local outcome improvement plans which should provide for a more coherent vision for communities."

If the time period in relation to repeat applications reflected the local development plan cycle and local authorities were given the power to decline to determine a second application for a similar development, we would help to secure that long-term vision for Scotland.

In the context of my attempt to restrict the occurrence of repeat applications, with amendment 145 amending the timescale, amendment 146 would require the Scottish ministers to publish guidance on what constitutes a "significant change" in a planning application.

There is currently no statutory definition of "significant change", as the minister said in his remarks on amendment 257. It is at the planning authority's discretion to ascertain whether an application is similar to a previous one. I note the minister's comments about the courts, but I think that guidance would provide for consistent and confident decision making on the part of planning authorities. Guidance would also inform developers about the level of change that would be expected before a subsequent application could be considered.

Amendment 147 is part of my package of amendments to address serial applications, which includes amendments 145 and 146. We must look at fees and the cost of submitting a similar application. I propose that if a developer makes a further application in the 10-year period that is proposed in amendment 145, and the application is found to be similar to the previous application, the planning authority should have the discretion to apply an appropriately significant fee.

If amendment 147 is agreed to, I suggest—in parenthesis—that it might be better to consider imposing a fine, given that the aim of the proposed approach is to remove the incentive to lodge a similar application to one that has been declined or is still under review.

**Monica Lennon (Central Scotland) (Lab):** Good progress has been made in the context of Claudia Beamish's proposals: the minister has moved from his predecessor's position.

I welcome the local example that Claudia Beamish has given. I do not know whether all

members of the committee received the email from Kilmacolm residents association yesterday. I do not know the local circumstances, but the email talks about a situation where a volume house builder has tried three times to get planning permission on a green-belt site. It has been refused twice by the planning authority and an appeal has been dismissed by the reporter. The email talks about the culture of developers submitting repeat applications until they get what they want. I will support the minister's amendment; I will also support Claudia Beamish's amendments. The amendments will not only improve planning practice but help to change that culture. I believe that all of us want to strengthen the plan-led system, and minimising repeat applications would go some way towards that.

09:30

**Annabelle Ewing (Cowdenbeath) (SNP):** Amendment 257 deals with the important issue of serial applications, and I am pleased to note that the minister has responded to concerns that I and, I am sure, other members have raised. That is a positive development.

What is not well known at the moment is that planning authorities have discretion. It is not well known among communities, or even among some councillors, that local authorities currently have that power. I am very pleased indeed to see that the period in question will, if amendment 257 is agreed to, be extended to five years. With respect to Claudia Beamish's amendment 145, I think that a five-year period strikes the right balance and reflects the issues involved, including the fact that, as the minister said, there is no planning appeal procedure where the planning authority exercises its discretion to decline to determine an application. The five-year period strikes that balance, and I am happy to support it. It is a welcome amendment that communities across Scotland will support.

**Kevin Stewart:** I am happy that Ms Ewing has highlighted the discretion that already exists. I have to say that, at times, it is frustrating for me as the minister to have to write to people—many of whom should be in the know, including elected members of local authorities—about the discretionary powers that exist.

I do not want to sound like a broken record, but I must reiterate the point about guidance in relation to all that we are doing here. Guidance cannot change the meaning of legislation—it just cannot. As I said, interpretation is a matter for the courts. I have said again and again that guidance cannot usefully address all the issues that might arise in every type of case.

**Claudia Beamish:** Will the minister give way?

**Kevin Stewart:** Very briefly.

**Claudia Beamish:** The minister says that guidance cannot change the meaning of legislation, but surely it can reflect what the bill says in terms of developing clarity. I believe that amendment 146 would achieve that and would help those who make planning decisions to do so in a consistent way.

**Kevin Stewart:** As I said, guidance cannot change the meaning of primary legislation. That is a matter for the courts. Beyond that, as I have just pointed out, we cannot set out in guidance every single aspect that may or may not occur. That theme will arise again later today, just as it has arisen in the past. Guidance is not the way to deal with the issue at all.

Amendment 257 proposes an increase in the timescale. With regard to Ms Beamish's amendment 145, we would see material consideration changes, and maybe even development plan changes, within the 10-year timescale that she envisages. It would not be reasonable to suppose that circumstances will not change substantially within that lengthy period. That is why the five-year period is the logical one to deal with here.

**Monica Lennon:** Will the minister give way?

**Kevin Stewart:** Very briefly.

**Monica Lennon:** I will be brief, minister. Were the same arguments not levied against your proposal to move from a five-year to a 10-year local development plan cycle, and have concerns in that respect not been overcome?

**Kevin Stewart:** There are real differences between what is being proposed here and what was proposed with regard to the local development plan cycle. The idea behind the move from five to 10 years for the cycle was to ensure that people were able to concentrate on delivery instead of having to plan constantly. With regard to Claudia Beamish's amendment 145, we will see very real changes happening over the period of time that she has proposed. I think that the five-year scenario is the logical one, and I therefore ask folk to support amendment 257 in my name and to reject the other amendments in the group.

*Amendment 257 agreed to.*

*Amendment 307 moved—[Monica Lennon]—and agreed to.*

*Amendment 306 moved—[Lewis Macdonald].*

**The Convener:** The question is, that amendment 306 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

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

**Against**

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

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

*Amendment 306 agreed to.*

**The Convener:** Amendment 318, in the name of Mark Ruskell, is grouped with amendments 80, 141, 208, 294, 324, 331, 323, 323A, 230, 263 and 335.

**Mark Ruskell (Mid Scotland and Fife) (Green):** The inspiration for amendment 318 came from the Scottish Parliament's first ever inquiry into air quality, which the Environment, Climate Change and Land Reform Committee undertook last year. The committee came to the strong conclusion that consideration of air quality issues had not been adequately embedded in the planning system and that change was needed in that respect.

Last week, the minister talked about creating great places. However, great places are also healthy places, and the reality is that every year 2,000 people die partly as a result of air pollution. There are, of course, statutory limits on the levels of pollutants in our air, and where those levels are persistently breached, that leads to the designation of an air quality management area. There are 32 such areas around Scotland, and the designation leads to the production of action plans, led by councils, in an attempt to drive pollutant levels back under legal limits.

However, there is no explicit link to the planning system. Most AQMAs are designated on the basis of transport emissions, but there is evidence that major developments are being approved without adequate mitigation measures being put in place, which effectively locks in illegal levels of pollution. An example that I would point to is a major housing allocation in Scone, where it was demonstrated that the building of 700 houses would have a significant impact on two AQMAs in Perth. That led to the director of public health for NHS Tayside lodging a formal objection to the development. It was finally agreed in discussions around phasing that only part of the development could be constructed ahead of a relief road being built to take traffic away from the two AQMAs, but that was very much an afterthought in the planning process; indeed, the proposal was considered at all only after a vociferous campaign by local communities.

My amendment 318 seeks to rectify the situation by elevating the consideration of air quality issues in planning, and it would apply to decisions taken for major developments in AQMAs and areas that are on the cusp of being so designated as a result of persistently high pollution levels. Back in the summer, I lodged an amendment that would have applied to all applications, both major and minor, but I have now withdrawn that and relodged it as amendment 318 to ensure that the provision would apply only to major developments. Any increases in air pollution from a minor development would be relatively insignificant, whereas major developments go through an environmental assessment screening process with, if appropriate, a full assessment being produced alongside traffic impact assessments. That should provide a robust basis upon which planning authorities can consider air quality issues. The amendment is not about stopping development per se, but about ensuring that, if a planning authority wishes to approve a major development in an AQMA, mitigation must be fully considered and acted on.

What is the point of having legally binding targets if they have little weight when it comes to planning decisions and are just to be considered as part of the balance of issues, as the minister put it last week? The failure to embed air quality in plans has led to successful legal actions against the United Kingdom and Scottish Governments in recent years. The committee has the opportunity to protect human health and create great places by agreeing to the amendment.

I move amendment 318.

**Jeremy Balfour (Lothian) (Con):** Amendment 80 aims to ensure that, when applications are made to a planning authority for planning permission regarding developments of housing that is suitable for older people and disabled people, the planning authority must proceed on the assumption that such applications will normally be granted permission. Given that, within a generation, a third of all Scots will be aged over 65, we are facing a significant shortfall in the number of retirement and accessible properties that are being built, which needs to be addressed urgently. Amendment 80 seeks to ensure that positive consideration is given to applications for retirement and accessible housing developments. That will help to address the imbalance and to meet the needs of our ageing population and of those with specific disability needs. I therefore ask the committee to support amendment 80 in my name.

Most people assume that disabled toilets cater for everyone with a disability, but they do not. Amendment 323 seeks to address that. There is a

shocking lack of toilet facilities available across Scotland for people with profound and multiple learning difficulties, for those with physical disabilities such as spinal injuries and for older people who have dementia. Amendment 323 calls for any large-scale new building planning application for a school, hospital, community centre or large retail shopping centre of over 10,000m² to include in the plans an accessible toilet that will cater for the needs of such individuals. Accessible toilets are specialist toilet facilities. They are a room of at least 12m² that must contain equipment including a hoist and an adjustable-height changing bench and must have room for two carers.

Such facilities allow individuals with complex needs the basic right to be included in society. They enable people to go out shopping for the day or to have a trip to the cinema and go to the toilet safely and comfortably, which is something that most of us take for granted. If amendment 323 is agreed to, there will also be an economic benefit, because at the moment many people cannot go shopping or to the cinema or other facilities because they know that they will not be able to use a toilet if they require it. Currently, there are only 172 accessible toilets in Scotland, only 10 of which are in Edinburgh. I am pleased to say that one of them is in the Scottish Parliament.

I will move amendment 323 in my name to ensure that disabled people and older people are included in plans for large-scale developments. I ask the committee to look favourably on Mary Fee's amendment 323A.

**Claudia Beamish:** Amendment 141 is consequential on amendment 140. Committee members and others present might be pleased to hear that I do not intend to move it, because I have had reassurances from the Scottish Government and the Scottish Environment Protection Agency in relation to amendment 140, on permitted development rights, which I did not move.

Amendment 331 is designed to ensure that the planning system can be used to enable and support local decision makers to explicitly weigh up the long-term cost implications and climate change impacts of development proposals against potentially competing considerations such as shorter-term economic considerations. The amendment is supported by Stop Climate Chaos Scotland, which is a broad coalition of groups including trade unions, community groups and churches as well as non-governmental organisations.

It is important that decisions in housing and transport planning, for example, are based on comprehensive information regarding the environmental impacts of infrastructure. Frankly, current practice is generally poor when it comes to considerations of lifecycle energy use and contributions to greenhouse gas emissions.

09:45

Requiring national and major developments to conduct a lifecycle greenhouse gas emissions assessment would help decision makers to make more informed judgments when weighing up project proposals, leading to more sustainable development and avoiding investment that will not serve us all well in the future. Amendment 331 would oblige a planning authority to consider

"the likely impact of the development's lifecycle greenhouse gas emissions on achieving national greenhouse gas emissions reduction targets".

Amendment 331 refers to the Climate Change (Scotland) Act 2009, so it might be that further consideration must be undertaken, even if there is a keenness on the amendment, given that the Climate Change (Emissions Reduction Targets) (Scotland) Bill is currently being considered by the Environment, Climate Change and Land Reform Committee.

As amendment 331 says,

"'lifecycle greenhouse gas emissions' means the emissions associated with the construction, operation and decommissioning of a development."

I believe strongly that Scotland must future proof in that area.

Amendment 230 would require community open space to be a condition of planning permission for a development of four or more dwellings. This is a probing amendment. It defines "community open space" as space with

"green infrastructure or civic areas"

and excludes parking spaces from falling under that definition. It is about creating positive living spaces for people, setting the tone for more communal environments, with potential benefits in terms of health, air quality, the local economy, inequality issues and general mental wellbeing.

Homes for Scotland highlighted concerns about amendment 230 in relation to a risk to already marginal activity that might be made unviable. As a representative for South Scotland, which is partly rural, I understand the concern, but I believe strongly that Scottish residents have a right to public community spaces where they live. In a similar way to the way in which amendment 227, which has already been considered, dealt with the play sufficiency assessment, amendment 230 highlights the importance of our living spaces and place making, with an emphasis on the need for community space in our housing developments.

Finally, I want to speak positively about Mark Ruskell's amendment 318.

**Graham Simpson (Central Scotland) (Con):** Before you do that, I would like to ask about amendment 230. The amendment says that the requirement to provide community open space should apply to any development of four or more houses. A development of four houses is a very small development. How on earth is someone who is building only four houses meant to provide community open space in every case?

You said that this is a probing amendment, so I do not know whether you intend to move it. Perhaps you could indicate that in your response.

**Claudia Beamish:** I would like to hear other members' comments before I make a decision about whether to move the amendment. That might seem to contradict what I said about its being a probing amendment, but I think that it is important to work out how we get community space.

I appreciate that, from the perspective of a developer, the space that would be required under the amendment is space in which a house could be built in what might be a marginal area. However, frankly, there are often developments in which houses are built very close together and without any viable community space for the people who live there. The issues around loneliness, mental health and so on are profoundly important for communities.

I recognise that four might not be the right number of houses, but that is a way of starting off a discussion. I leave that where it is and will see where we go with it.

Mark Ruskell's amendment 318 is significant with regard to protecting our communities against air pollution. I appreciate that he has revised the position that he took in a previous amendment, and that the approach that he is taking is now only about major developments. Having taken evidence in the Environment, Climate Change and Land Reform Committee throughout last year on air pollution, I know that this is a serious issue for communities and that air pollution is a contributory factor in the deaths of significant numbers of people in Scotland every year. It must be addressed as a health issue.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Good morning. It is great to be back, and I thank the committee for having me.

Amendment 208, in my name, concerns the proliferation of housing development in my constituency and in many other constituencies. I should say at the outset that Liberal Democrats are not instinctively or ideologically opposed to new housing—indeed, Edinburgh and Scotland need new housing. Amendment 208 speaks to the correspondence that I have received from many constituents and community groups, and the issue that the amendment covers resonates throughout all local authorities with Liberal Democrat members, who have submitted responses to me during the bill process.

Amendment 208 is about strengthening the presumption of the use of brownfield land in housing development. In Edinburgh, for example, brownfield land was owned for development as early as 2003—prior to the crash—but the land has not been built on. Lots of people bought houses in some of the outpost communities that were established, with the expectation that such communities would grow up around them, that schools would be built and that transport infrastructure would be enhanced. However, there was then the economic downturn and developers moved away from plans to develop the land. Instead, developers favoured plans to develop more lucrative green-belt land, where they could exact a higher premium for their purchase.

Amendment 208 would spell out to developers that they need to give due consideration to development on brownfield land, and developers would need to give adequate reasons for dismissing such development. The amendment would give local authorities the power to reject a development on greenfield land, if it deems the land to have

"intrinsic natural or cultural heritage value".

That speaks to many developments, particularly those in my constituency but in other members' constituencies, too.

I am happy to be here, and I thank the committee for the opportunity to speak to amendment 208.

**John Finnie (Highlands and Islands) (Green):** We are discussing the determination of applications, so people might be a bit surprised to see the word "demolition" feature in amendment 294, in my name. However, it concerns planning authorities' ability to grant

"permission for a development that involves the demolition of a building".

Amendment 294 refers to the Housing (Scotland) Act 2006, which is a commendable piece of legislation that ensures that high standards are applied. If a landlord is not prepared to put in place those high standards, they are enforced by way of a repairing standard enforcement order.

I am dealing with a live case. The Highlands and Islands, as well as many urban areas, are blessed with a number of rogue landlords, and there is a strong history of abuse in the relationship with

housing and occupancy. At the moment, strange though it might seem, a rogue landlord, rather than undertake the work after receiving a repairing standard enforcement order, could seek to circumvent—someone has sought to circumvent—putting in place the requirements of a repairing standard enforcement order by applying for demolition. Amendment 294 would ensure that, were such an order in place, demolition could not take place.

I will confine my comments simply to the two amendments in my name. Amendment 335 relates to the Ramsar convention. For those who do not know, Ramsar sites are internationally important wetland sites that are identified for protection under the Ramsar convention. The Scottish Government's policy is to apply the same level of protection to Ramsar sites as that which is afforded to designated Natura sites.

The legislation in question is the Conservation (Natural Habitats, &c) Regulations 1994, which gave legal protection to Natura sites in Scotland. The habitat regulations ensure that any plan or project that might damage a Natura site must be assessed and can go ahead only if certain strict conditions are met. That process is known as the habitats regulations appraisal, one aspect of which is an appropriate assessment. Given that Ramsar sites are not listed specifically in the habitat regulations, it is unclear how the Scottish Government's policy to give such sites the same level of protection as that of Natura sites should be implemented.

In a previous session of Parliament, my colleague, Mark Ruskell, proposed an amendment to the Nature Conservation (Scotland) Bill on that very point and the response from Allan Wilson was:

"Ramsar sites in Scotland are already well protected through existing designations so there is, strictly speaking, no need for the kind of additional mechanism that Mark Ruskell proposed".—[*Official Report*, 5 May 2004; c 8025.]

However, that is incorrect, because the listed features of Ramsar sites in Scotland are not always covered by underlying designations or, in some cases, are protected only by a lower-level site of special scientific interest designation, which does not provide the equivalent level of protection as for Natura sites.

The Planning (Scotland) Bill is an opportunity to demonstrate the Scottish Government's commitment to an important international obligation. I hope that the minister will seize that opportunity.

**Graham Simpson:** Amendment 324 deals with biodiversity. I have spoken quite a bit about the need to deliver more houses in the right places, but that should not be at the expense of biodiversity. The concept of net biodiversity gain is increasingly well recognised in environmental assessments. It requires any development to leave biodiversity in a better state than it was before the development. It is particularly important to secure that requirement as there is currently no statutory system for ensuring that impacts on biodiversity are mitigated outwith designated sites. Residual, cumulative effects are particularly hard to address. A requirement to provide net biodiversity gain would help Scotland to meet its obligations and targets.

England's 25-year environment plan states:

"We will seek to embed a 'net environmental gain' principle for development to deliver environmental improvements locally and nationally."

Scotland should also be looking to achieve that.

Amendment 324 is not particularly taxing. It provides that if a planning authority thinks that there could be an effect on biodiversity as a result of a development, it should consider that—just "consider" it. Having considered that, the authority should grant permission only if it is satisfied that there will be a net positive effect on biodiversity from the development. If we want to improve habitats and make great places for people to live, that would be one way of doing it. Amendment 324 ties in nicely with other amendments that focus on health.

Amendment 323, in the name of Jeremy Balfour, deals with the provision of specialist toilet facilities in large developments. The amendment is a thing of beauty—much like Mr Balfour. We initially thought that the issue might sit better in building regulations, but on reflection, we think that planning can help. We support amendment 323A, in the name of Mary Fee, which would add to the list of buildings that amendment 323 covers.

I strongly support Alex Cole-Hamilton—I have not often been able to say that—and amendment 208 in his name. We can help to regain trust in our planning system by ensuring that development takes place on brownfield instead of land that was previously green belt, where that is achievable. Amendment 208 would help to achieve that aim. An application to build on green belt could not be approved unless there was a statement by the applicant setting out why the proposed development could not be achieved on brownfield land.

I lodged an amendment on brownfield land that I did not move. If Alex Cole-Hamilton moves amendment 208, he will have the support of the Conservatives.

Amendment 318, in the name of Mark Ruskell, on air quality zones, has the best of intentions, but despite its being reworded, there could still be unintended consequences. If amendment 318 is

agreed to, almost any road or large industrial development, or large retail, restaurant or housing development, could be rejected on the ground that they might cause some pollution. As I mentioned previously, we want to protect the environment, but it is a question of balance.

**Mark Ruskell:** All that amendment 318 requires is consideration of adequate mitigations. If a road was being built that would be fine, but there would have to be consideration of what mitigation there was to be in respect of air pollution. That reflects the legal requirements of air quality management areas and taking decisions that are consistent with that. It is a matter not of stopping developments, but of ensuring that we mitigate the impact of things that are being constructed.

10:00

**Graham Simpson:** Yes. It is a question of unintended consequences that could be used to stop things that would be desirable. I have no idea what will happen if the amendment is defeated, but I simply urge Mr Ruskell to think again before stage 3 and to have further discussions about it.

Amendment 294, in the name of John Finnie, states that planning authorities

"must not grant planning permission"

for a development if it involves knocking down a building that should have been repaired. I can see where Mr Finnie is coming from, but I think that he should have chosen a better form of wording, such as "may not", which would allow for some flexibility. We cannot support amendment 294 in its current form.

I questioned Claudia Beamish previously on amendment 230, about providing "community open space" for developments of four or more houses. Frankly, I think that that is ridiculous, if I may use that word. It is unachievable for developments of that size. A development of four houses is small, and I cannot see how every development of that size could possibly meet Ms Beamish's demands.

**Monica Lennon:** I have not had the chance to speak to Claudia Beamish in detail about her proposal, but we have talked in committee about trying to encourage smaller builders and small-scale developments. I am not sure whether she is thinking about the cumulative impact in smaller settlements where we could have small-scale developments of four units, or maybe under 10 units, but that could be a way to fill gap sites. Maybe what she had in mind is that, with a group of small developments, there could be a risk that there is no contribution to community open space. Her amendment 230 could be a way to increase that provision. It is not without its challenges, and I think that Claudia Beamish recognises that.

**Graham Simpson:** I think that she has accepted the challenge—

**Monica Lennon:** Maybe Kenny Gibson wants to come in. It is good to debate such things.

**The Convener:** Could members speak through the chair, please?

**Monica Lennon:** I am sorry, convener.

**Kenneth Gibson (Cunninghame North) (SNP):** I am thinking about communities in my constituency, where a lot of gap sites are being filled in. Some have been derelict for years, and developers have come in and built five, six or seven houses on them. Frankly, if there was a need for the community spaces that are being discussed, those developments simply would not have progressed. Amendment 230 would be a deterrent to filling in many gap sites in towns and cities. Monica Lennon is trying desperately to rescue Claudia Beamish's amendment 230 by talking about small villages, but I do not think that we can take it seriously.

**The Convener:** Thank you. Back to Graham Simpson.

**Claudia Beamish:** Can I just comment briefly on that?

**The Convener:** We have to move on.

**Claudia Beamish:** I think that we have to discuss the matter.

**Graham Simpson:** Are you looking to intervene?

**Claudia Beamish:** Yes.

**Graham Simpson:** I have not even spoken yet.

**The Convener:** That is always the best time to intervene. Are you happy to take an intervention?

**Graham Simpson:** Yes, I will take the intervention.

**Claudia Beamish:** Thank you. I would like to comment on a point that Graham Simpson has already raised. Amendment 230 is a probing amendment, and I think that there may well be other ways of achieving what it proposes. Monica Lennon mentioned some of them. It is not ridiculous to look at people's mental health and at the possibilities of green spaces—

**Graham Simpson:** Come on.

**The Convener:** That sounds like a defence of your position.

**Claudia Beamish:** I say with respect, convener, that it is important that we have green spaces in our communities.

**Graham Simpson:** Of course it is.

**Claudia Beamish:** At stage 3, we could propose a local authority fund, which is something that people have discussed with me since I lodged amendment 230, or there may be other ways of doing it, but we cannot go on having people crowded in together without space for amenity.

**The Convener:** You made those points in your earlier comments.

**Claudia Beamish:** Yes, but I am defending my amendment 230 against the claim that it is "ridiculous".

**The Convener:** We need to get a response from the minister shortly. Graham Simpson has still to continue with his contribution.

**Graham Simpson:** I will do so briefly, convener. It is good to spark a debate, however.

Claudia Beamish has mentioned green spaces and mental health. Every single member of the committee is in favour of green spaces and every single member of the committee sees their value in helping to prevent mental health problems, but we must look at amendment 230's wording, which deals with potentially tiny developments.

Claudia Beamish represents a rural area, where there could be, for example, small courtyard developments of four or five properties at which there would not be space to provide "community open space", however valuable doing so might be. I will certainly not support amendment 230, if Claudia Beamish presses it.

Sadly, I cannot support Claudia Beamish's amendment 331 either. It would be impossible for a planning authority to assess the

"likely impact of the development's lifecycle greenhouse gas emissions on achieving national greenhouse gas emissions reduction targets".

That would be too far too onerous for councils.

**Mary Fee (West Scotland) (Lab):** I will speak to amendment 323A, which is my amendment, and in support of amendment 323, which is in the name of Jeremy Balfour.

Amendments 323 and 323A serve to strengthen the bill by including a statutory provision for inclusion of changing places toilet facilities in certain large new developments. Such toilets are essential for people who live with profound and multiple learning difficulties, or with disabilities that severely limit mobility, and for people who are unable to use standard accessible toilets—that is, disabled toilets.

In February 2009, the British Standards Institution's BS 8300 "Design of buildings and their approaches to meet the needs of disabled people—Code of practice" was published. The code provides guidance on the design of buildings to ensure that they met the needs of disabled people, and outlined the specifications for changing places toilets. Amendment 323 attempts to enshrine in legislation the recommended BS dimension for such toilets. As the amendment outlines, those toilets should be a minimum of

"12 square metres, to allow up to two carers to assist an adult to use the toilet".

My amendment 323A would supplement and strengthen amendment 323. BS 8300 recommends nine categories of larger buildings and complexes that should provide a changing places toilet, and amendment 323 covers four of those categories. Amendment 323A adheres to the BSI recommendation to standardise provision of changing places toilets by making them a legal requirement in

"Major transport termini and interchanges ... Cultural centres, such as museums, concert halls and art galleries ... Stadia and large auditoria"

and motorway service facilities. At present, the provision of changing places toilets is sporadic and inadequate because there is no legal requirement for large buildings and complexes to provide facilities that comply with BS 8300.

To give one small example, I note that there are only two changing places toilets on Scotland's road networks. Both are located on the M74: one is at the Cairn Lodge services near Lesmahagow and the other is at Annandale Water services near Lockerbie.

There is growing awareness about the necessity for changing places toilets. It is estimated that more than a quarter of a million people across the UK need changing places toilets to enable them to get out of the house and go about their day-to-day activities. I believe that the Scottish Parliament should lead the rest of the UK on the issue.

From an equalities and human rights perspective, agreement to amendments 323 and 323A would ensure that our public buildings, shared spaces and the wider built environment are more accessible, inclusive and responsive to the basic needs of all members of our society.

Changing places toilets are vital and potentially life-changing facilities. Their introduction in new developments would ensure greater accessibility and inclusivity for carers and individuals who require those facilities. The reality is that without access to a suitable changing bench and hoist, many people with complex disabilities are forced to choose between lying on an unhygienic toilet floor or becoming trapped in their own home.

I urge the committee to support amendments 323 and amendment 323A.

**Kevin Stewart:** I will start by explaining amendment 263, which is largely technical, and then I will address the policy issues that are raised by other amendments in the group.

Section 58 of the 1997 act deals with the situation in which planning permission expires without development having begun. The default is three years from when permission is granted, but section 58(4)(c) provides an exemption to avoid a temporary planning permission with a very short life having a default requirement to begin development by a date after the permission has expired.

These days, however, even large-scale and long-term developments can have time limits, decommissioning strategies or reinstatement requirements specified in planning permission and thus, technically, will be temporary. The risks are that the exemption might also apply to some of those permissions, or that there is uncertainty over whether or not it does. That would mean that such permissions could exist permanently, with communities and planning authorities not knowing whether or when a development might be started. However, amendment 263 will remove that exemption to make temporary planning permission subject to the normal rules on when it expires. I hope that the committee will support the amendment.

The remainder of the amendments in the group seek in one way or another to limit planning authorities' ability to determine applications for planning permission, according to the circumstances of individual cases. Mr Simpson mentioned unintended consequences; I think that a number of the amendments would certainly have such consequences.

I have made it clear throughout this process that I do not agree with centralising and inflexible approaches—above all, because they do not allow the authority to balance the different issues that arise in order to arrive at the best overall decision. That said, I will make an exception for amendment 323, in the name of Jeremy Balfour, and Mary Fee's amendment 323A to that amendment. I recognise the importance of changing places toilets to the lives of people who have profound and multiple learning disabilities and to their families and carers, so I thank Mr Balfour for raising the issue with support from Mary Fee, and for working constructively with officials to ensure that we have the best possible amendment.

I certainly want to ensure that any new large public building is provided with such facilities, but we must be proportionate and avoid anomalies such as requiring every new classroom extension to have its own changing places toilet. Amendment 323 provides for regulations to refine the developments to which the requirement would apply and the specification of the facilities required, so that things can be kept up to date with changes in technology and standards. That is very helpful.

Under my instruction, the Scottish Government has already been working to introduce such facilities through the building standards system, with a working group having been set up to develop proposals for public consultation. We will need to work through how the two regimes should interact, but I ask the committee to support the amendments in the name of Jeremy Balfour and Mary Fee.

I also support the principle behind John Finnie's amendment 331, which relates to protection of Ramsar sites. Of course, I cannot comment on any live planning application that might have inspired the amendment—

10:15

**John Finnie:** Will the minister give way?

**Kevin Stewart:** Let me make some progress, Mr Finnie, and then I will take your intervention.

**The Convener:** I think that the member is seeking clarification about the amendment number.

**Kevin Stewart:** On you go, then, Mr Finnie.

**John Finnie:** My amendment is actually 335.

**Kevin Stewart:** I beg your pardon.

The Government has already confirmed that its policy is to give the same level of protection to Ramsar sites as to European protected sites, and under amendment 335, it would be not a matter of policy but a legal restriction.

For technical reasons, however, I cannot support amendment 335, as drafted. First, the approach is not ideal, because European sites are supported through regulations rather than through primary legislation. As the majority of Ramsar sites in Scotland are also European sites, I am concerned about duplicating assessments unnecessarily.

Furthermore, the language and terminology require technical adjustment. I wonder whether Mr Finnie has fully considered whether transposing the wording that is drafted for European protected sites will technically work for Ramsar sites, given that they are designated in a different way. I also think that we should ensure that any definitions are consistent with those elsewhere in legislation. I will be happy to work with Mr Finnie on the matter, and I therefore ask him not to move amendment 335, in order to allow further discussion.

Amendment 80, in the name of Jeremy Balfour, demonstrates the difficulties of attempting to set a

new basis for determination of applications without also making it clear how it might fit with the existing duty to determine applications for planning permission in accordance with the development plan unless material considerations indicate otherwise. The amendment does not set out what is considered to be housing that is suitable for older people and those with disabilities, or even how old those "older people" might be. Not all disabilities require physical adaptations to be made to a house, so the assumption could apply to all housing, as it would be suitable for some older people and some people with disabilities. Even if some accessibility standards were applied, the houses could be completely inappropriate for the location. In what circumstances could the planning authority override such a presumption in favour of agreement? That has not been made clear.

The committee has agreed a range of amendments that will ensure that housing for older people and disabled people has a prominent place in the development plan in addition to existing policy. Decisions that are based on those plans and policies should therefore deliver appropriate housing for older people and disabled people, having balanced all the other material considerations that might arise. It is not helpful to disrupt that system, so I ask the committee not to support amendment 80.

Alex Cole-Hamilton, through amendment 208, would like anyone applying for planning permission in the green belt to identify some brownfield land that was not suitable for their development, and explain why they did not choose to develop there. That would apply not only to new development but to anyone who wanted to extend their existing home in the green belt or, perhaps, create facilities to help people enjoy the green belt.

Scottish planning policy states that it is up to planning authorities, in preparing local development plans, to decide whether to have a green belt in their area, to decide on the policies for supporting it and to define appropriate development within it. That will include appropriate protection for the natural or cultural heritage value of the land, as they see fit, so a decision based on the development plan will give those issues appropriate weight.

Where a development plan promoted the use of brownfield sites over any green-belt land that had been designated, one would expect the applicant to make a case for why they had gone for development in the green belt, if alternative sites were possible. If a planning authority has gone to the trouble of designating a green belt and having policies to protect it that fit the needs of its area, it seems that it would be inappropriate to fetter its ability to decide whether to grant planning permission in the way that is proposed by amendment 208.

John Finnie's amendment 294 appears to be trying to use the planning system to protect tenants. However, if a landlord decided not to comply with a repairing standard enforcement order and instead to demolish the building, having planning permission would not be a green light to do so. Planning permission would not in itself override tenants' rights, although in some cases an intention to demolish a building, even if it is in perfectly good condition, might be grounds for eviction.

Amendment 294 also refers to work that was required under a repairing standard enforcement order not being completed. Only the housing and property chamber of the First-tier Tribunal for Scotland can determine whether such works have been completed. Procedurally, that leaves the planning decision dependent on a determination of the tribunal, and could create a situation in which planning permission could not be granted to demolish a building that was unsafe, for example, or which was blocking other needed development.

Amendment 294 meddles in a complex area in which decisions really need to be taken case by case, with regard to the planning issues and to the relevant tenancy provisions.

**John Finnie:** I note the minister's comments and I concur with him that it is a complex area that involves the housing and property chamber and a decision ultimately by local authorities. Would he accept that this is not an academic argument? I am not drawing him into a particular case but, as things stand, a rogue landlord can circumvent housing legislation by applying to demolish their property; that is simply unfair.

**Kevin Stewart:** I am willing to speak to Mr Finnie further on the issue. However, as I have said on previous occasions and at the very beginning of this discussion, there are unintended consequences to amendment 294, as there are to many other amendments in the group. I ask John Finnie not to press amendment 294, but I am willing to talk to him further about it.

The other amendments in the group likewise deal with important issues, but much broader ones, which may have a range of solutions, and are therefore more appropriately dealt with in policy and through the judgment of planning authorities. Many of these amendments, as drafted, would have significant impacts, which I hope are unintended, but which highlight the difficulty of such prescription.

My view is that the review of the national planning framework and Scottish planning policy is the best place to consider these issues in more

detail and with the flexibility that is needed. I hope that members will agree to work with me on that approach.

I will start with Mr Simpson's amendment 324 and Ms Beamish's amendment 331. The environmental impact assessment regulations already require an assessment of the likely significant environmental effects of relevant developments and consideration of any measures to avoid, prevent, reduce, or offset those effects. Those regulations have their own criteria for determining which developments need an assessment. They do not align exactly with national and major developments but they ensure that relevant projects are covered, including some local developments.

Requiring a separate assessment through planning legislation risks duplicating rather than streamlining procedures, with no opportunity for screening to allow authorities to focus on development that will have significant impacts.

Both biodiversity assessment and measurement of lifecycle greenhouse gas emissions are highly specialised areas that can quickly become very complicated and could introduce significant cost and delay for applicants, who will have to provide additional supporting information with their applications.

It is, of course, important that significant development projects support our targets for reducing greenhouse gas emissions and are resilient to the impacts of climate change in the long term. The EIA includes an assessment of impacts relating to climate. There is not a specific requirement to undertake a lifecycle analysis, and methods can vary, but it is normal for such assessments to cover all phases of development. I do not want to duplicate that, but perhaps we can arrive at a more proportionate solution.

For example, I agree that it would be useful to undertake such an assessment of all the proposed national developments to be included in national planning framework 4 and I would be happy with an amendment in those terms, so that the most significant long-term infrastructure projects in Scotland would be assessed in that way. However, I am more cautious about major developments where the consideration may not always be relevant or add value to existing assessments.

Scottish planning policy states that the planning system should seek benefits for biodiversity for new development, where that is possible. Mr Simpson's amendment has no doubt been informed by the UK Government's approach to net biodiversity gain. However, the apparent simplicity of the amendment belies a complex policy area. Every proposed development may have an effect on biodiversity, however slight, so the amendment would require measurements to ensure net positive effects on biodiversity for every development—every home extension, every illuminated sign and every equipment store—and if such measurements could not be secured, planning permission would have to be refused. Although I understand the intention behind the amendment, it could seriously and fundamentally risk stalling development of all kinds and undermining economic growth across Scotland. I believe that primary legislation is too blunt an instrument to reflect the complexities involved in the issue.

**Graham Simpson:** That is the second time that the minister has referred to house extensions in his arguments. If I were to build an extension to my house, I can assure him that there would be no biodiversity effects. He is going a bit too far in his objections.

**Kevin Stewart:** A number of today's amendments would have the unintended consequences that I spoke about. I am not going too far or scaremongering; those would be the consequences of the amendments for very small developments. The committee has to take cognisance of that point. I am willing to have further discussions and I have already said that we can work together on national planning framework 4 and national planning developments. A number of amendments in this group have unintended consequences and I hope that folk will recognise that I am pointing them out—they are realities.

Mark Ruskell's amendment 318 on air quality could effectively ban major development in some of our larger urban areas and limit a planning authority's ability to use a range of solutions to mitigate or offset the effects of new development. A major source of air pollution is transport, which is why Scottish planning policy sets out a framework for decision making on new development that is designed to reduce the need to travel and encourage sustainable transport options, therefore reducing transport emissions. It could be argued that the amendment could lead to perverse effects whereby major developments are forced to locate in less sustainable out-of-town locations to avoid air quality zones, even though action could have been taken to mitigate any effects on air quality. The Environment, Climate Change and Land Reform Committee recommended that air quality should be considered in the review of the national planning framework. We will work to ensure that NPF4 aligns with the package of measures in Scotland's strategy, "Cleaner Air for Scotland: The Road to a Healthier Future".

I am glad that Ms Beamish has said that she will not move amendment 141, because it would, in

effect, have given SEPA powers to be the decision maker, with a veto in some cases.

Amendment 230, which is also from Ms Beamish, would remove flexibility from planning authorities and is not clear enough about what it requires. The Scottish Government previously commissioned research and carried out a detailed consultation on setting requirements for open space at national level. A number of practical barriers to implementation were highlighted, including the differences between urban and rural areas and the amount of community open space that is already available. Opinion differs over how the amount of open space that is required should be calculated and there are wider concerns about the impact on development viability, as Mr Gibson and Mr Simpson have pointed out.

10:30

Research that was carried out for Scottish Natural Heritage on the development of green space standards found that

"many of the earlier open space standards have been implicated in the creation of poor spaces and developments with little sense of place."

However, amendment 230 does not address those concerns. It does not say how much open space would be required and it would not allow off-site provision or improvement of existing green space in the area. Those are often good solutions for urban developments, especially flats, where open space cannot be provided on site.

I recognise that since our most recent consultation on the issue there has been renewed interest in a national standard for green infrastructure and some potential models have been developed. I strongly believe that policy is the appropriate place to include detailed but flexible requirements to make sure that open space truly enhances our places.

I ask the committee to support my amendment 263 and amendments 323 and 323A in the names of Jeremy Balfour and Mary Fee, and I urge the committee not to support the other amendments in the group.

**Andy Wightman (Lothian) (Green):** The minister talked about unintended consequences. I am sure that members will listen to his views carefully and those who have lodged amendments will take a view as to whether they wish to press or move them. If they do that, I am sure that, as he said, the minister will be open to discussions about how they may be refined at stage 3.

I support Mark Ruskell's amendment 318. In my view, it is proportionate. The minister argues that it would not allow for mitigation measures but, with pre-application procedures and good conversations on the planning application, the point is that it prohibits planning permission being granted only where, in the planning authority's opinion, it would

"have an adverse effect on the achievement of the limit value"

in an air quality management zone. Those things can all be resolved before the formal application is submitted. Amendment 318 is a proportionate amendment to ensure that we are not in breach of the law.

I cannot support Jeremy Balfour's amendment 80. It invites planning authorities to proceed on an assumption that permission "will normally be granted" for two very worthy types of development, but there are risks that that could override valuable provisions in the local development plan. In extremis, it could provide that such developments may be built in the middle of parks, for example.

I understand where Claudia Beamish is coming from with her amendment 230. For example, the Edinburgh Northern and Leith constituency, which is in the Lothian area that I represent, is the most densely populated part of Scotland and there are many gap sites that need to be filled. There are tenement properties that by definition cannot provide community open space within the footprint of the development, although I note that the amendment says:

"In this section 'community open space' means space within or on the edge of settlements".

In theory, one could apply to build some tenements in Leith with the community open space being five miles away in the Pentland hills. There is important stuff in the amendment, but I cannot support it being in primary legislation.

**Monica Lennon:** On a point of clarification, I think that the minister said that Claudia Beamish's amendment 230 mentions the footprint of sites and does not allow for off-site provision, but Andy Wightman has helpfully pointed out that she provides that definition of "community open space". Perhaps there has been a misunderstanding, but I agree that there is work to be done on the amendment.

**Kevin Stewart:** Convener, may I clarify something? Amendment 230 does not say how much open space would be required and it does not allow off-site provision or improvement of existing green space in the area. I am pointing out these things. I have had legal officials and others working on the bill and looking at the purpose and effect of all the amendments, and I have shared purpose and effect documents with members. Those are the situations—there are unintended consequences. I am pointing out the effects of the amendments.

**Andy Wightman:** I thank the minister for that intervention.

Finally, on John Finnie's amendment 294, I understand the points that the minister has made, but the amendment attempts to close a loophole and resolve a conflict that needs to be resolved. I hope that John Finnie will move the amendment and I will support it. I am sure that the work that needs to be done to give it full legal effect can be done before stage 3.

**The Convener:** Monica Lennon can come in briefly.

**Monica Lennon:** I will speak to a couple of the amendments. I strongly support Mark Ruskell's amendment 318, and I agree with him that it is important to embed air quality into development plans. The points that Andy Wightman made about air quality management areas bring some perspective and proportionality to the discussion.

**Kevin Stewart:** May I intervene?

**Monica Lennon:** Go ahead.

**Kevin Stewart:** Ms Lennon just talked about embedding air quality in development plans, but amendment 318 is not about development plans; it is about individual applications. That point needs to be made.

**Monica Lennon:** I do not dispute that clarification. Perhaps I misquoted Mark Ruskell, because I have been told to be brief, but I think that we understand that the amendment is about assessing planning applications in air quality management areas.

On Jeremy Balfour's amendment 323 and Mary Fee's related amendment 323A, I echo the minister's remarks and commend Jeremy Balfour and Mary Fee for those amendments. The committee has discussed at length the fact that access to toilet facilities is absolutely crucial for public health and should not be an afterthought. We have heard that equality impact assessments are at times not robust enough; indeed, the equality impact assessment for the bill has been criticised. That is a bit of a weak link that we need to look at. I support those amendments. Mary Fee's work on changing places has been tremendous. I congratulate the minister, too, on his commitment to that issue.

That takes me back to a previous amendment in Alison Johnstone's name, on which we had another lively debate. She was trying to ensure that planning authorities consider the provision of public toilets in their areas, and she proposed that a statement should go in local plans. She was successful—I think that the vote was four to three in favour—but I recall that the minister argued against that. I hope that there has been a change of heart, as that would be positive.

On amendment 80—

**Jeremy Balfour:** Convener, I will not move amendment 80 today. I hope that I can do some work to clarify the situation before stage 3.

**Monica Lennon:** I welcome that, as it is sensible. We support the spirit of amendment 80, but there are problems with the way in which it has been framed. It uses the term "assumption", which is normally difficult in development management terms.

I support Alex Cole-Hamilton's amendment 208, so well done, Alex.

I did not expect there to be so much discussion on Claudia Beamish's amendment 230. As she set out, it is a probing amendment. It shows the difficulties that there are in the perception of what might be a reasonable contribution to community open space. Based on my reading of the amendment, that would not necessarily be about what is in the footprint of an application site but about its wider contribution within a town or settlement. That would be particularly so if there were to be a number—or an accumulation—of smaller developments, all of which were high density but none of which made a contribution to community open space. That could lead to difficulties. In saying that, I was not desperately trying to salvage Claudia Beamish's amendment—that is a matter for her—but I welcome the discussion that we have had around that.

It sounds as though there is perhaps quite a serious case behind John Finnie's amendment 294, but I think that it needs further work. If John Finnie moves it, I do not think that I will be able to support it.

**The Convener:** I invite Mark Ruskell to wind up and indicate whether he intends to press or withdraw his amendment.

**Mark Ruskell:** Tempted though I am, I will resist speaking to every single amendment in the group.

**The Convener:** Thank you, Mark.

**Mark Ruskell:** I will, however, reflect briefly on John Finnie's amendment on Ramsar sites. I vaguely remember the discussions with Allan Wilson in session 2. It is important that we revisit our international environmental obligations, especially now that we are heading towards post-Brexit environmental governance arrangements in the UK and Scotland. I would welcome further discussions with John Finnie and the minister on that.

My amendment 318 is on AQMAs and air pollution. I am disappointed that our obligations under European law continue to be seen as just part of the balance of issues that need to be discussed at local level in relation to individual

planning applications. That misunderstands the importance and purpose of European law in protecting human health. I am sure that the exchanges in today's meeting will provide food for thought for those who are considering further legal challenge about the inability of the UK, as a state, adequately to embed European law on air quality in its plans and programmes. Notwithstanding that, we should reflect on the minister's point on mysterious unintended consequences. I would welcome further discussion with him and his officials between now and stage 3, if he would be minded to engage in that.

As I have said, the purpose of amendment 318 is not to stop development per se; it is to push for further options around mitigation to be discussed at the earlier, pre-planning phase. It does apply to individual applications, because environmental and traffic impact assessments take place at that level where we have a good evidential basis for considering the impact of the development and the mitigation options that might flow from that. With that in mind, at this point in stage 2, I am minded to seek to wthdraw the amendment, pending further discussions with the minister. I will consider what options we can put forward—

**Kevin Stewart:** Will Mr Ruskell take an intervention?

**Mark Ruskell:** Go on, then. I am mid-sentence, but—

**Kevin Stewart:** I just want to say that I am more than happy to have such discussions with Mr Ruskell.

**Mark Ruskell:** Well, that is the last word, is it not?

**The Convener:** Mr Ruskell, can I clarify whether you wish to withdraw amendment 318?

**Mark Ruskell:** I wish to withdraw the amendment.

*Amendment 318, by agreement, withdrawn.*

*Amendment 80 not moved.*

*Amendment 141 not moved.*

*Amendment 208 moved—[Alex Cole-Hamilton].*

**The Convener:** The question is, that amendment 208 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

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

**Against**

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

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

*Amendment 208 agreed to.*

*Amendment 294 not moved.*

*Amendment 324 moved—[Graham Simpson].*

**The Convener:** The question is, that amendment 324 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

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

**Against**

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Lennon, Monica (Central Scotland) (Lab)

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

*Amendment 324 disagreed to.*

*Amendment 258 moved—[Lewis Macdonald].*

**The Convener:** The question is, that amendment 258 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

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

**Against**

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

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

*Amendment 258 agreed to.*

*Amendment 331 not moved.*

10:45

**The Convener:** Amendment 1, in the name of Adam Tomkins, has already been debated with amendment 2. Is anyone going to move amendment 1 on behalf of Adam Tomkins?

**Graham Simpson:** Yes.

*Amendment 1 moved—[Graham Simpson].*

**The Convener:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

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

**Against**

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

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

*Amendment 1 agreed to.*

*Amendment 323 moved—[Jeremy Balfour].*

*Amendment 323A moved—[Mary Fee]—and agreed to.*

*Amendment 323, as amended, agreed to.*

*Amendment 230 not moved.*

*Section 15 agreed to.*

10:47

*Meeting suspended.*

10:53

*On resuming—*

### Section 16—Schemes of delegation

**The Convener:** Amendment 259, in the name of the minister, is grouped with amendments 260 to 262, 332, 264 and 265, 321, 266 and 16.

**Kevin Stewart:** Throughout the review of the planning system, our consultations and stage 1 of the bill, I made clear that, following the passage of the bill, we will consult on revising the structure and levels of planning fees and charges, in light of the new structure of the planning system.

We will do so in recognition of the need to move towards full-cost recovery, so that the reformed planning system can be appropriately funded. Currently, income from planning applications does not meet the costs of processing those applications.

A number of possible changes to fees have been suggested. The bill makes a number of adjustments to the powers to make regulations about fees, to ensure that we will be able to implement those suggestions—if they are supported in the consultation that will follow. The amendments in my name in this group add to those adjustments.

One suggestion is that applicants should be able to pay a higher fee for a fast-track service. An authority would probably need to provide a dedicated staff resource to provide such a service without detriment to other applications.

We already have sufficient powers to charge a different fee for a service, but currently applicants can agree only to an extended timescale for determining an application, and they can do so only after submitting their application and paying the appropriate fee. That timescale relates to when the applicant can bring an appeal or request a review on the ground of non-determination.

Amendments 259 to 262 will allow an authority and prospective applicant to agree a timescale that is longer or shorter than the standard period, and to do so before the application is submitted. If the application is to be fast tracked, the authority will then be able to charge the appropriate fee.

Section 21(7) amends the powers on fees regulations, to allow a surcharge to be imposed over and above the normal fee, where a planning application is made after the development has been carried out. Retrospective applications create a lot of frustration when people are thought to be flouting the planning system; there has been substantial support for charging higher fees in such situations.

The Delegated Powers and Law Reform Committee recommended that there should be some restriction on how—or the circumstances in which—the power can be exercised. We agree that, in the circumstances that we are talking about, a limit would be appropriate. Amendment 266 therefore provides that the surcharge cannot be more than the standard fee for the application. In other words, the retrospective charge cannot be more than twice the normal fee. Our consultation on fees will consider what the level should be, within that limit.

The bill provides for the Scottish ministers to charge fees for their own planning activities. It also allows for provision to be made in the fees regulations to enable planning authorities to waive or reduce a fee. I am grateful to the Delegated Powers and Law Reform Committee for pointing out a discrepancy in that regard, in that the ability to waive or reduce fees does not apply to the Scottish ministers. Amendments 264 and 265 will correct that oversight.

Amendment 332, in the name of John Finnie, would make provision to charge fees for monitoring compliance of planning conditions. The Scottish ministers already have the power to set such fees in regulations, under section 252(1)(b) of the 1997 act. Indeed, they have exercised that

power: the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 provide for fees to be charged for site visits to monitor whether planning controls are being complied with. Therefore, I do not support amendment 332, because it is unnecessary.

Amendment 321, in the name of Monica Lennon, suggests that regulations might provide for fees to be waived where a development will contribute to a social enterprise or non-profit organisation, or is likely to contribute to improving the health of residents in the area to which the application relates. I would be happy to consider both issues in the consultation; we will need to look carefully at the definitions. I would prefer to leave the options completely open until we have the consultation, so I do not support amendment 321.

Graham Simpson's amendment 16 would restrict ministers' powers to set out circumstances in which a planning fee could be refunded for unreasonable delay. It would require ministers, if they used those powers, to provide that the fee must be fully refunded if an application remained undecided after 26 weeks.

The Scottish Government has maintained over many years that any increase in planning fees must be linked to improved performance. However, Mr Simpson's approach is not the way to go about that. When we consulted on the option in 2010, less than a fifth of the respondents supported the proposal.

11:00

Recent research has shown that there are many reasons for delays in deciding applications, not all of which are within an authority's control. In a large number of cases, the main reason for delay was the need to wait for additional reports or information from the applicant. I do not think that the introduction of refunds as a matter of course would resolve those issues and lead to the improvement in timescales that Mr Simpson might suppose. It certainly would not address the problem of underresourcing that planning authorities face, because authorities would process an application without any payment. I am happy to include in the forthcoming consultation on fees the question of when refunds might be appropriate, but I do not believe that such a blanket approach is helpful.

I ask the committee to support the amendments in my name in this group and not to support the other amendments in the group.

I move amendment 259.

**The Convener:** Thank you. John Finnie will speak to amendment 332 and the other amendments in the group.

**John Finnie:** I will restrict my comments to my amendment 332, which would introduce fees for monitoring complex developments. I hear what the minister has said—my notes include a reference to surface coal mining. The amendment would extend to other development types because monitoring complex developments is essential to ensure their compliance not simply with planning conditions but with regard to mitigation, restoration and aftercare plans. There might be significant repercussions if such schemes are not monitored appropriately. The proposals would allow for cost recovery for planning authorities' monitoring input and would accord with the polluter pays principle, which is important.

**Monica Lennon:** As the minister said, amendment 321 in my name would waive fees and charges for developments that have the main purpose of contributing to a not-for-profit enterprise or improving the health of residents in the area to which the development relates. Recent experiences of charities in my Central Scotland region include a case in which a rape crisis centre had to pay the planning fee for a planning application for the change of use of premises. There is a six-month waiting list for people to access the centre's services for rape survivors; the Government has stepped in with additional money, but there are still waiting times. We could do something about such services having to find money for planning applications.

On social enterprises, we have talked a lot about bad neighbour developments; I am thinking about good neighbour developments that would help to rescue our town centres and have positive impacts on public health, such as tackling social isolation and loneliness. The planning fees can often be a barrier for such organisations and start-up businesses. That is the rationale for amendment 321.

I hear what the minister said, but I will move amendment 321 and I hope that committee members will support it.

**Graham Simpson:** Amendment 16 would ensure that, if a planning application was not dealt with within 26 weeks, there would be a full fee refund unless the parties agreed otherwise. The intention was to incentivise councils. However, I have heard what the minister, stakeholders and members have had to say and I will not move the amendment. I welcome the fact that there will be a consultation.

We support the Government's amendments 259 to 262 and 264 to 266 and I am pleased that the minister has responded to the Delegated Powers

and Law Reform Committee about the points that it raised. We can also support Monica Lennon's amendment 321, which would allow councils to waive fees for social enterprises. That could be a big incentive to get such enterprises up and running.

**Monica Lennon:** Will Graham Simpson take an intervention?

**Graham Simpson:** I have just finished. I am supporting your amendment.

**Monica Lennon:** The intervention is about amendment 324.

**Graham Simpson:** Okay—feel free.

**Monica Lennon:** I hope that you will find my intervention helpful. I appreciate and am grateful for what you just said. I simply wanted to put on record that I voted against Graham Simpson's amendment 324 on biodiversity effects in error—I got my notes muddled up. I apologise for that. I support that amendment, and if Graham Simpson brings it back at stage 3, I would be happy to correct my error.

**The Convener:** You are friends again.

**Monica Lennon:** I would not go that far!

**Graham Simpson:** I appreciate Monica Lennon's comments. I say to the people who are watching that the stage 2 process can be a confusing experience, even for MSPs. Monica Lennon simply made a mistake.

**The Convener:** I call the minister to wind up.

**Kevin Stewart:** I am glad that the amendments that I lodged seem to be relatively uncontroversial. I am pleased that Mr Simpson indicated that he will not move amendment 16, because I think that it is too prescriptive. If it were agreed to, if I was a developer, the ideal timescale for my planning application to be approved would be 27 weeks.

I ask Ms Lennon to consider not moving her amendment 321. We can deal with all those issues in the round in a oner in the consultation—that is the best place to do it.

**Monica Lennon:** What is the timescale for the consultation? When will it end?

**Kevin Stewart:** We have to pass the bill first; I am unable to give you the consultation timescale until we deal with the bill.

**Monica Lennon:** Apologies—I thought that the minister was talking about an additional consultation that might be running in parallel. I would be concerned about waiting that long.

*Amendment 259 agreed to.*

*Amendments 260 and 261 moved—[Kevin Stewart]—and agreed to.*

*Section 16, as amended, agreed to.*

**After section 16**

**The Convener:** Amendment 15, in the name of Graham Simpson, is grouped with amendments 144, 22 and 142.

**Graham Simpson:** I have lodged amendment 15 because it is imperative that limitations are placed on the powers of the Scottish ministers. Ministers should not have an uninhibited ability to override and undermine local democracy by calling in any application. We also do not want to see ministers' authority undermined through their being open to allegations of being influenced by third parties. Ministers should not have carte blanche to call in any application; there must be checks on their power.

Under amendment 15, ministers could call in only national developments. However, on reflection, what I have proposed is too strong. It would have prevented, for example, the call-in of the Coul Links application, and I think it right that the minister was able to call in that application. Therefore, I will not move amendment 15 and I will come back to the issue at stage 3. However, I support Mark Ruskell's amendment 22, which would allow ministers to make regulations on call-ins.

**The Convener:** I ask you to move amendment 15, because that is the process.

**Graham Simpson:** But I do not intend to move it.

**The Convener:** You need to move the amendment, but you can then not press it.

**Graham Simpson:** Claudia Beamish's amendment 142 says that ministers "must" review applications when

"the Scottish Environment Protection Agency has objected on the grounds of concerns in relation to flood risk."

That possibly goes too far. We must trust councils, so the more proportionate word "may" could be better.

Monica Lennon's amendment 144 would help to prevent the Scottish Government from intervening in a planning application before a decision had been made, so ministers could not sweep in too early and have an impact on the decision about an application. I will support that amendment.

I move amendment 15.

**Monica Lennon:** I accept that it is essential in some situations for ministers to have the power to call in applications and I would not support plans to remove that power completely. However, to pick up where Graham Simpson left off, there must be a balance. When a planning application comes

before a planning authority, there should be a reasonable period for the planning authority to do its normal business of public consultation and for the neighbour notification period to take effect.

I will clarify what Graham Simpson said. Amendment 144 is not about the planning authority having to make a decision before ministers can intervene; it is about protecting the prescribed period. Under regulations, planning authorities must make a determination within a certain time, although that does not mean that the decision will be taken.

I have kept in mind what happened in Cockenzie, when the application was called in very prematurely—about three or four weeks after it was lodged. Such an approach gets in the way of local accountability and the local planning authority's democratic right to scrutinise applications properly. It is only fair for local authorities to be guaranteed the maximum time that is set out in legislation for them to consider and scrutinise decisions properly.

**Mark Ruskell:** Ministerial powers to issue a direction to call in an application for determination are important, and we can support them. However, if those powers are used without transparency, they can undermine faith and certainty in the planning system and undermine confidence in ministers' role in it.

Amendment 22 would not remove or restrict call-in powers; it would merely allow the Government to clarify by regulations the circumstances in which the powers can be used. The amendment would allow Parliament to scrutinise those regulations under the affirmative procedure.

**Claudia Beamish:** I do not intend to move amendment 142. In relation to my amendment 140, we had a robust and useful discussion of flood risk. There are ways of taking forward the issues. As amendment 142 is consequential, I will say no more about it.

**Kevin Stewart:** The Scottish ministers' discretion to call in any planning application from a planning authority for their own determination is a well-established and important aspect of our planning system. Over the decades, successive Governments have exercised the discretion to call in a wide range of applications across Scotland.

The Government recognises that planning is primarily a matter for local authorities and values their key role in the system. In 2009, we announced a more proportionate approach to ministerial intervention in planning cases. We greatly reduced the circumstances in which planning authorities had to notify applications to ministers for consideration of call-in, and we made it clear that we would exercise our right to call in applications very sparingly and only when matters of genuine national interest were involved.

That approach has been borne out by our actions. The number of applications that are notified to ministers has dropped from around 200 each year before 2009 to an average of 24 now, and the number of planning applications that are called in has dropped from around 25 to 30 annually to just three to five each year. For a bit of context, I point out that more than 35,000 applications were decided across Scotland last year.

11:15

**Andy Wightman:** Will the minister take an intervention?

**Kevin Stewart:** Yes.

**Andy Wightman:** Although I personally believe that those moves by the current Administration are welcome, the issue is about what the law says on the level of discretion. There is nothing to prevent a future Administration from operating its discretion far more liberally than the current Administration does. It is about providing greater clarity and certainty and, to a degree, fettering ministers' discretion to use the power.

**Kevin Stewart:** I will come on to talk about discretion and some of the points about the law, because the issues are not as easy as members might think.

I respect the role that our planning authorities play, but circumstances can occasionally arise in which it is more appropriate to further scrutinise and decide on an application at the national level. I am regularly asked by members of the Parliament, including members of the committee and members who are visiting it today, to call in applications all over Scotland. Sometimes, it is appropriate for me to do so, but in many cases people have been disappointed when I have chosen not to call in applications. I do not intervene when I consider it appropriate for the planning authority to make the decision.

To give a current example, which Mr Simpson touched on, I recently called in a planning application to the Highland Council for a new golf course at Coul, near Embo. It is a live case and I will have to make the final decision, so obviously I will not make any comments about the merits of the case. However, I received requests to call in that application from 14 MSPs from across the parties, one MP and bodies including RSPB Scotland, the National Trust for Scotland, the Scottish Wildlife Trust and the Marine Conservation Society. We also received a great number of letters of concern and some of support from the public. Ultimately, I considered that it was

appropriate to call in the application for a decision at national level because the proposal raises issues of national importance in relation to natural heritage and compliance with Scottish planning policy.

I am glad that Graham Simpson intends to seek leave to withdraw amendment 15 because, if it was agreed to, I would not be able to call in applications in similar situations in the future, as the proposal is not a national development within the national planning framework. It is not only national developments that can raise issues of national importance. Even small developments can have a significant impact on our natural and historic environments and on important infrastructure, to give just a few examples. There are circumstances in which planning decisions ought to be made nationally, and many people would not want that power of additional scrutiny to be lost.

Amendment 22, which was lodged by Mark Ruskell, recognises that there are circumstances in which planning decisions ought to be made nationally and that therefore ministerial call-in can sometimes be appropriate. I welcome that. I also understand the sentiment behind the amendment, which is to bring more certainty around how and when the call-in power is exercised. However, we cannot reasonably set out in legislation an exhaustive set of circumstances in which applications may or may not be subject to call-in. Although amendment 22 would not remove Scottish ministers' discretion entirely, it could raise expectations and become unduly restrictive.

Earlier this year, I issued a notification direction for an application for a proposed residential development on a site next to Edinburgh zoo. My decision to intervene was in the light of possible negative health impacts for the giant pandas, as advised in representations by the Royal Zoological Society of Scotland. The issues that were raised are of national and, arguably, international importance, but it seems unlikely that any regulations would have covered conditions in which we are required to take cognisance of panda love and romance. That shows the value of having a responsive approach.

However, I recognise that it might be helpful to bring more clarity to the Government's call-in approach. I am prepared to look again at our guidance, to seek to bring greater clarity to our approach when considering call-in. For those reasons and with that commitment, I ask Mark Ruskell not to move amendment 22.

Amendment 144, in the name of Monica Lennon, would prevent a call-in direction from being issued until after the period prescribed for the planning authority to issue a decision notice had expired. However, once a decision notice has been issued and there is no live application to determine, the Scottish ministers cannot call in the case, unless the applicant seeks a local review of the decision.

**Monica Lennon:** I have taken some advice from the Parliament clerks on that, because other members asked me the same question. Amendment 144 is not designed to require the planning authority to have made the decision—I get the minister's point about the Scottish ministers not being able to call something in at that point. The purpose of the amendment is to allow the two-month period to pass. In the example that I gave of Cockenzie, the call-in direction came early in the process.

Going back to my earlier remarks, it is right that there is a call-in process and that there are checks and balances. The approach has to be proportionate. In the example that the minister gave of Coul Links, the local process was able to run its course and we were able to say that it was a case of national and international significance. We could see the bodies of evidence and representation, and it is very healthy that many members made representations. It is about trying not to bypass local democracy. I wanted to make that point clear to the minister.

Perhaps I can squeeze in a question. I wonder about the three to five call-in cases that you look at each year, minister. Do you routinely visit those sites as part of your assessment?

**Kevin Stewart:** We again have a situation in which a member is trying to say that their amendment would not do a certain thing, when—quite categorically—it would. This is about the unintended consequences of certain amendments that have been lodged.

I have spoken to a number of members about their amendments, which has led to better drafting, even though I do not necessarily agree with the amendments. Ms Lennon has had the opportunity to come and speak to me about a number of amendments. A meeting was arranged, but it was cancelled by Ms Lennon.

I say again to members that I am more than willing to speak to anybody about their amendments, and I am willing for my officials to do the same. However, I cannot sit here in a situation in which a member lodges an amendment and says that the amendment is designed not to do something that it quite clearly would do.

**Annabelle Ewing:** As someone who has been on both sides of the table, I would like the minister to clarify why he takes the view that he does, because I hear muttering about the advice that people have been given. I presume that his interpretation of the unintended consequences of

Monica Lennon's amendment 144 is based on the advice that he has received from officials.

**Kevin Stewart:** As folk might well imagine, I have a number of officials working on the bill, including lawyers and solicitors, who look at all the amendments and the consequences of them. I have been quite open in giving the committee purpose-and-effect documents, to show the purpose and effect of our amendments, but I cannot do that for the amendments of other folk.

**John Finnie:** Will the minister take an intervention?

**Kevin Stewart:** I will take Mr Finnie's intervention once I have finished the point that I am making.

As I said, I am more than happy to arrange for members to meet me or officials to talk about the purpose and effect of their amendments, and a number of members have taken advantage of that offer. With some amendments—we have considered one such amendment today, from Mr Balfour—the work that has been done has led to an amendment that is much better for all concerned, including the folk out there who are interested in the issue.

**John Finnie:** I am grateful to the minister for taking my intervention. On other committees, I have appreciated the Scottish Government sharing its purpose-and-effect notes. However, does the minister accept that some things are a matter of opinion? Everyone here is acting in good faith. We have all proposed changes that have been certified as competent, but what sometimes does not come out in discussions is the effect of not doing something.

**Kevin Stewart:** To an extent, I agree with Mr Finnie on that point. Such discussions could take place. I welcome members coming to speak to me about the bill. A number of members have had numerous meetings with me, while a number of members have chosen not to meet me—that is their prerogative—but have spoken to officials. I am happy about that because, no matter what, I want us to produce the best piece of legislation that is possible. Mr Finnie is right to say that there are often different opinions, but I must look at the legal advice that I receive extremely carefully, as he will well understand.

Once a decision notice has been issued and there is no live application to determine, the Scottish ministers cannot call in the case, unless the applicant seeks a local review of the decision. In the normal course of events, we would consider issuing a call-in direction only if the planning authority had processed an application and was intending to grant permission, and that triggered a requirement to notify ministers of the authority's intention. There are general notification directions that apply to cases in which, for example, an agency or neighbouring planning authority has advised against the granting of planning permission, or to planning authority interest cases that are contrary to the development plan.

It is extremely rare for ministers to intervene early in the planning process, but there have been, and there might again be, instances in which early intervention by ministers is considered necessary in the national interest—for example, to make sure that a decision is made before other deadlines expire. That was the case in Cockenzie. It would not be helpful to lose that ability.

Amendment 142—which Claudia Beamish said that she would not move, for which I am grateful—would put SEPA at the forefront of decision making, which I do not think is the right thing to do. I am grateful to Ms Beamish for the comprehensive conversations that she has had with officials about this, and I have given a commitment to look at the matters in more depth, as she is well aware.

I strongly urge the committee not to support the amendments in the group.

11:30

**Alexander Stewart (Mid Scotland and Fife) (Con):** Will the minister take an intervention?

**Kevin Stewart:** I am happy if you are, convener.

**The Convener:** Sorry, Alexander, you are too late. We have just moved on.

**Alexander Stewart:** Okay. That is fine.

**The Convener:** Thank you. I call on Graham Simpson to wind up and press or to seek to withdraw amendment 15.

**Graham Simpson:** I will not press amendment 15, as I said earlier, but it has certainly raised the important issue of how much power should be invested in the minister.

**Kevin Stewart:** Will Mr Simpson take an intervention?

**Graham Simpson:** Certainly.

**Kevin Stewart:** Mr Simpson raises a point about where power lies. There is always debate about that, but some of the amendments that have been lodged would give ministers more power than they currently have on a number of issues. There is a fine balance to be struck with some of these things. I completely and utterly understand that people want clarity on a number of issues, but I think that designating some of those matters in primary legislation would make life extremely difficult. Again, there would be unintended consequences. I am more than happy to have

further discussion with Mr Ruskell and I think that it is right to do so, but I ask the committee not to support his amendment 22 today.

**The Convener:** I ask everybody who either makes or responds to an intervention to be as brief as they can be. Interventions are meant to be brief. If people make lengthy interventions, they are not likely to get the opportunity to make an intervention in future.

**Kevin Stewart:** I apologise, convener.

**The Convener:** Thank you, minister.

**Graham Simpson:** I am not sure why the minister felt the need to make that intervention. He just repeated himself, and given that I said that I am not going to press amendment 15, it was slightly unnecessary.

This is about ministerial power. We are dealing with when it is right to call in an application. The minister might not call in very many—good for him—but he is not going to be the minister for ever and the Government will not be here for ever. We have to deal with the law as it stands, and we could have another minister in the future who takes an entirely different approach. It is quite right that we set out the boundaries of ministerial power.

I said earlier that I think that my amendment 15 goes too far. It does. Amendment 22, in Mr Ruskell's name, is right at the other end of the scale, as it gives ministers the ability to set out matters in their own regulations. I cannot see why the minister would oppose that.

I see that Mr Ruskell and Ms Lennon want to intervene. I am happy to take their interventions.

**Mark Ruskell:** Do you agree that the minister has already accepted the notion of creating a framework and guidance around ministerial call-in decisions? He just does not want it to be in regulations that are subject to affirmative procedure, which is disappointing.

**Graham Simpson:** I entirely agree with that.

**Monica Lennon:** I just want to reflect on the fact that, where people have been afforded the opportunity to meet the minister and/or his officials, that has been productive. However, I was quite disappointed by the minister's remark that I cancelled a meeting and, in effect, did not bother to pursue that—

**The Convener:** I do not see how this is an intervention for Graham Simpson.

**Monica Lennon:** I have to put this on the record, because I was offered a date—

**The Convener:** Monica—

**Monica Lennon:** If I can finish briefly—

**The Convener:** Actually, as convener, I decide whether you can finish. You can write to the minister if you are unhappy with his comments and you can put it on the public record after that. Let us concentrate on the business of the day.

**Monica Lennon:** Well, I think that the minister has been very unfair and misleading, but we have the email chain to prove that. I will write to the minister, but—

**The Convener:** This is nothing to do with—

**Monica Lennon:** I would be more than happy to have dialogue and a meeting with the minister—

**The Convener:** Excuse me, Monica.

**Monica Lennon:** —and his officials.

**The Convener:** When I say it is finished, it is finished. Thank you.

**Graham Simpson:** I will not press amendment 15.

*Amendment 15, by agreement, withdrawn.*

*Amendment 144 moved—[Monica Lennon].*

**The Convener:** The question is, that amendment 144 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

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

**Against**

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

**Abstentions**

Wightman, Andy (Lothian) (Green)

**The Convener:** The result of the division is: For 3, Against 3, Abstentions 1. The convener's casting vote means that the amendment falls.

*Amendment 144 disagreed to.*

*Amendment 22 moved—[Mark Ruskell].*

**The Convener:** The question is, that amendment 22 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

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

**Against**

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

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

*Amendment 22 agreed to.*

*Amendment 142 not moved.*

**The Convener:** Amendment 164, in the name of John Finnie, is in a group on its own.

**John Finnie:** First, I would like to thank the minister for the offer of talks on this particular issue. Unfortunately, diary clashes meant that those did not take place but, as with other amendments, I would be keen to continue discussions.

This is my second session in Parliament. In the previous session, I was on the Equal Opportunities Committee, which produced two strongly worded reports on a cross-party consensual basis. The reports were about the conditions that the Gypsy Traveller community have to put up with in relation to accommodation and health conditions.

I do not doubt people's commitment to address this issue and people have worked on it since then, including the former cabinet secretary Angela Constance. The minister himself has been involved in various aspects.

My amendment 164 covers permitted development. We could argue that we have already agreed to an amendment on that issue today: Mr Balfour's amendment 323. Importantly, under my amendment 164, development would only be considered where it is

"in accordance with the development plan".

There are some fairly recent examples of changes to permitted development rights, which have covered alterations to shops, schools, colleges, universities, hospitals and office buildings; off-street recharging of electric vehicles; disabled access ramps; and private ways, commonly known as tracks or hill tracks, which I know the committee will go on to discuss.

We have to ask what has come of those Equal Opportunities Committee reports and to what extent they relate to this legislation. It is my belief that there is a willingness, both centrally and locally, to do things. However, there is a tension between central direction and local autonomy, which we have heard about in relation to a number of other amendments.

There is no doubt that sites struggle to gain planning permission. That is often down to local pressure and it is fuelled by prejudice. I welcomed the recent debate on a change in language and the move away from viewing such sites as housing to viewing them as accommodation. In fairly recent weeks, I have dealt with a situation where people were shut out of their accommodation, which took the form of a centuries-old location. Travellers were unable to get in because a farmer had dug a trench around the site. I stress that that particular group of Travellers have been using that site for centuries. The language of the day, of course, is that that would be an unauthorised encampment. It begs the question how authorised provision is afforded.

As I said, I acknowledge all the efforts and if I sound a bit frustrated, it is because I am extremely frustrated at dealing with this issue and the disregard that there is for the Gypsy Traveller community. Barely a week goes past that there are not examples of it. There was one fairly recently in this very city.

Amendment 164 may seem to be a very blunt instrument—I make no apology for that.

I move amendment 164.

**Kevin Stewart:** I applaud Mr Finnie—as members know, he has been active on the issue of rights for the Gypsy Traveller community. He raises an important issue around the accommodation needs of the Gypsy Traveller community.

As I have explained to the committee previously, I am absolutely committed to ensuring that Gypsy Travellers are properly involved in planning the future of their places. The quality of our places matters to all of us and planning has a responsibility to ensure that the needs of all our communities are understood and met. To do that, we are determined to break down any barriers that prevent people from getting involved in shaping the future of their places.

The committee accepted amendments to part 1 that will ensure that community voices are heard when a planning authority is preparing its local development plan.

Although I am entirely supportive of Mr Finnie's motive and intentions, I am unable to support his approach. Amendment 164 would work against a key principle of our planning system: that decisions are made by planning authorities, in accordance with the current development plan, unless material considerations indicate otherwise.

Planning plays a vital role in ensuring that Gypsy Travellers have safe and secure places to stop or settle. Currently, Scottish planning policy requires councils to plan for the current and future needs of the Gypsy Traveller community and involve the community in planning and decision making that affects them. The policy states that development plans and local housing strategies

should address any need identified through the housing needs and demand assessment, including those of Gypsy Travellers.

We refreshed the housing need and demand assessment guidance in October. The most significant change to the refreshed guidance is the inclusion of an enhanced requirement for local authorities to consult stakeholders in relation to specialist provision of accommodation and housing for all groups with protected characteristics, including the Gypsy Traveller community.

Local development plans should make appropriate provision for Gypsy Traveller sites, and where an application is in line with that plan, it should usually be agreed. However, planning authorities must have the flexibility to make sure that the detailed proposals for the site are suitable—listening to the people involved—and to refuse the application if they are not. Otherwise, we could end up with sites that do not meet the needs of the community and end up not being used, which would not help anyone.

Earlier this year, the Government put together a 10-point action plan on Gypsy Travellers and planning and we are making progress to deliver it. I would be happy to provide the committee with a copy of that plan, if it is of interest. As part of that process, we commissioned research to find out more about how the planning system currently addresses the need and demand for Gypsy Traveller sites. The results of the research will inform the preparation of the next national planning framework. We are also actively drawing the attention of heads of planning and planning committee conveners to the issue.

I want to make sure that the Gypsy Traveller community has a stronger voice in guiding the future development of their places and that appropriate provision is made for them. However, we should not do so by using an approach that bypasses local decision making. I am more than happy to have further discussions with Mr Finnie. I ask him to seek to withdraw amendment 164.

**John Finnie:** I thank the minister for his remarks. He suggests that we have "further" discussions because we had a very brief discussion as we passed in the corridor.

Let us analyse some of the things that the minister has just said. He talked about the housing strategy, which is a very important document—except that Gypsy Travellers do not consider "housing" to be an appropriate term for them. The housing needs assessment is very important and the minister went on to say how we address the needs and demands. However, I can think of a local authority that, following some vandalism on a site and without consulting anyone, decided that there was no need.

I asked the local authority how it assessed the demand, but I ask the minister, how do you assess the demand across authorities? We are dealing with a population that, by its very nature, travels, so it is not an issue for one authority.

11:45

I apologise to people who have heard me on a rant about this previously. My particular frustration is not with the local authorities that provide sites, but there is a whole load of authorities that have their heads down and want nothing to do with this. The idea that we leave the matter to local flexibility means inertia. In relation to planning for current and future needs, I want to ask what has happened. Nothing has happened—absolutely zero.

Does any part of the bill reinstate a traditional site? I was over in Skye, where people have relocated from one lay-by to another. People know that, as a result of the so-called new age travellers—many of whom are comedians now back working as merchant bankers in the City of London—lots of areas were cut off and traditional stopping sites were dug up. I have repeatedly raised this matter and I have been told nonsense, such as the claim that there are health and safety issues. There are no health and safety issues at all. People make decisions on their own merits, and the individuals who dug a trench and put boulders in place can get the JCB back, fill in the trench and remove the boulders.

It requires action by Government. Everyone is well meaning. I do not doubt for one second the will of the minister and his colleagues to address the situation, and of course, as a Green, I absolutely value local decision making, but unless someone is going to grasp the issue there will be no decision making, because we know that the local paper will protest and local members will follow the views of the community. There are considerable difficulties, and the problems in the minister's own part of the world have been well documented.

If the minister can explain to me how the strategy has helped in the past five years, or how even the terminology of the housing needs analysis—

**Kevin Stewart:** If Mr Finnie will let me intervene, I will respond. I have already spelled out some of the actions that we have taken and are going to take. I do not want to go into great depth about that today, but I am more than willing to have an in-depth conversation with Mr Finnie about how we move forward on this and other issues. Mr Finnie knows that I have shared his

frustration about some of the issues for quite some time, particularly when I was a local authority member. I will work with Mr Finnie to try and ensure that we can better the lives of Gypsy Travellers and involve them more in the process, but I have to reiterate that I do not think that the way to do it is by bypassing local decision making. I am more than willing to talk further with Mr Finnie.

**John Finnie:** I thank the minister for that intervention and I will say again, for the avoidance of any doubt, that I do not doubt his personal commitment to the issue. We will make the diaries work and add it to the agenda, and I will not press the amendment at this stage.

*Amendment 164, by agreement, withdrawn.*

**The Convener:** Amendment 165, in the name of Andy Wightman, is in a group on its own.

**Andy Wightman:** Amendment 165 deals with a long-running issue in planning—that of private ways, which are essentially tracks built on land for private purposes, especially at high altitudes in the hills, with a lack of effective planning control. Tracks constructed for the purposes of agriculture and forestry do not currently require full planning consent; they are permitted development. Tracks built for the purpose of field sports and shooting are, in theory, required to be subject to full planning consent, but all too often, for reasons that I will explain shortly, that does not happen.

In 2013, Scottish Environment LINK published a major report, "Track Changes", which highlighted the widespread damage being done across Scotland's hills by poorly constructed tracks. Despite widespread support for such development to be brought under full planning control at that time and, as I understand it, despite clear advice from officials to Scottish ministers, the then minister with responsibility for planning, Derek Mackay, instead introduced a system of prior notification as part of the continuing regime of permitted development rights.

Last month, Scottish Environment LINK published a follow-up, report, "Changing Tracks", which I understand is in the possession of members of the committee and of the minister and his officials. It evaluates the experience since 2014. "Changing Tracks" concludes that the system is confusing, lacks democratic oversight and effective public engagement and continues to allow damaging development. I commend Scottish Environment LINK and the author of its excellent report, Melanie Nicoll, for all their hard work.

I mention two reasons why the theoretical requirement for full consent for tracks that are used for the purpose of field sports is failing. First, it is not universally agreed that field sports are a purpose that is distinct from agriculture. The legislation that created permitted development rights did not adequately define agriculture and forestry. Secondly—and this is the important reason—in numerous instances, applicants have claimed that a track is for agricultural purposes when it is, in fact, for grouse shooting or deer stalking. They make that argument on the basis that there might be a few sheep grazing on the hill. It is virtually impossible for planning authorities to challenge or disprove such claims; if they attempt to, they are likely to end up in the Court of Session.

I have another important point to make about amendment 165. The first part of the amendment merely restates the current law as it is supposed to operate. Ideally, I would have lodged an amendment that would remove permitted development rights for agriculture and forestry as well. I have chosen not to for proportionality reasons. The major impacts are in areas that are used for shootings, where tracks have been built that are often claimed to be for agriculture. The major impacts are not from farming or forestry, albeit that I believe that tracks used for farming and forestry purposes should come under full planning consent. However, that is not the purpose of the amendment.

The second part of amendment 165 is a new provision. It would extend the current regime, whereby full planning consent for private ways in national scenic areas are required, to cover national parks, designations under the Nature Conservation (Scotland) Act 2004 and battlefields.

The Cairngorms National Park Authority's latest park plan, which was signed off by the Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, contains a presumption against new constructed tracks in open moorland. The problem is that the authority can only implement that presumption in the 25 per cent of the national park area that is a national scenic area, where full planning consent is required. Over the remaining 75 per cent of the park, applications for such tracks are permitted development, subject to a prior notification regime that was introduced in 2014. Over that 75 per cent, the principle of tracks has already been conceded through the prior permitted development regime and effectively granted; they qualify for permitted development rights, notwithstanding that prior approval can assist in modifying some elements of design or routing.

My amendment 165 would do two things. First, it would require tracks on land used for shooting and field sports—not tracks that are used for that purpose, because that has been the reason for the loophole—to be subject to full planning consent. As I have said, technically that is already the case but the existing regime has been widely flouted by

claims that the tracks are for agricultural purposes merely because of a few sheep on the hill, which are there not for agricultural purposes but to mop up ticks in order to try to boost grouse populations. I am not singling out or, in the words of the Scottish Land & Estates briefing, "demonising" a vital industry; I am focusing on the circumstances in which most issues and problems occur. If members are concerned that I am picking on shooting and field sports, I would be happy not to do so and to come back with an amendment that includes agriculture and forestry and treats everyone equally.

**Annabelle Ewing:** I hear what Andy Wightman has said, but does he want to impinge on the activities of agriculture and forestry? I would have thought that they are good things.

**Andy Wightman:** I have not said anything to suggest that they not good things. Of course they are good things; lots of things are good. The planning system is there to make sure that developments have proper regard to local development plans, the environment and all the rest of it. Many agriculture and forestry tracks do not have proper regard to those things, but I am leaving them out at the moment for proportionality reasons.

The second thing that the amendment does is that it extends the current provisions that require full planning consent for any private way in a national scenic area to national parks, designations under the Nature Conservation (Scotland) Act 2004 and battlefields. Such an extension to national parks and other protected landscapes was recommended in a Government-commissioned review in 2007. My amendment does not even go as far as the review recommended, because, as I have indicated, it leaves the PDR regime for agriculture and forestry untouched.

It is totally unacceptable for ordinary householders to be required to secure full planning consent for many quite modest developments while miles and miles of poorly constructed roads, particularly in Scotland's national parks, can be built with no equivalent level of scrutiny and public consultation.

If amendment 165 is not agreed to, damage will continue to be done to our natural heritage through the inability of planning authorities to effectively regulate the construction of hill tracks. Nothing in my amendment seeks to ban hill tracks; it merely extends to those tracks the routine procedures that planning authorities already have in place and which govern a wide range of other developments.

I move amendment 165.

**Graham Simpson:** Like most—indeed, probably all—committee members, I really value the countryside. I have met Ramblers Scotland and read the "Changing Tracks" report, which, I have to say, makes a compelling case for better regulation. However, the current system has been in place only since December 2014, and it seems a little early to be changing the legislation in this area.

My problem with Andy Wightman's amendment 165 is that it singles out

"land which is ... used for shooting or ... field sports".

Those are the words in the amendment.

**Andy Wightman:** Will the member give way?

**Graham Simpson:** Yes.

**Andy Wightman:** Given what the member has said, instead of singling those things out, might he be willing to remove agriculture and forestry from permitted development rights?

**Graham Simpson:** The problem is that we are dealing with the amendment that is in front of us, which singles out

"land which is ... used for shooting or ... field sports".

If Andy Wightman wants to lodge another amendment at stage 3, we will consider it then, but as it stands, amendment 165 goes too far, and I cannot support it.

**Andy Wightman:** Will the member take another intervention?

**Graham Simpson:** Let me continue. I accept that there is an issue here. I am a keen hillwalker, and anyone who goes out into the hills will see for themselves that there is an issue. However, amendment 165 goes too far.

**Andy Wightman:** Does the member agree that, as the law stands, tracks that are built for the purpose of field sports require full planning consent but that that consent is not being asked for, because applications are masquerading as agricultural measures? Amendment 165 does little more than restate the current law in more effective terms. Does the member agree?

**Graham Simpson:** I have no idea whether that is the case—I have seen no evidence to suggest that it is. However, I have a suggestion. The minister is about to speak, and if he were to commit to reviewing how the current legislation is working and to promise to issue guidance to councils if it were found that it was not working as it should be, that would be helpful.

**Kevin Stewart:** First, there are no current permitted development rights for shooting or field sports. If a planning authority is not satisfied, on prior notification, that a private way is for

agriculture or forestry use, it should require a planning application to be submitted for it.

**Andy Wightman:** Will the minister give way?

**Kevin Stewart:** Very briefly.

**Andy Wightman:** That is exactly the position that I have set out. However, does the minister agree that, with regard to a planning authority's refusal of such a planning application on the basis that it believes that the purpose of the track is for field sports, it is very difficult to make that case when the track might be used by, say, a mountain rescue team one day or by a shepherd going to dose some sheep with insecticide the next? It is virtually impossible for planning authorities to make that case and use the law as intended.

12:00

**Kevin Stewart:** Again, the question is: what will be the outcome of a particular amendment? There is debate in that respect.

I want to turn to the key issue with regard to permitted development rights, which are set out in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended over the years. The order is commonly referred to as the GPDO, and I, too, will refer to it as such from here on in.

Such rights are partly intended to strike a balance between the need for businesses to have some certainty about carrying out development that is required for the operation of their business and other factors such as the impact on the environment, local amenity and so on. I understand that there are concerns around the creation of private ways and their potential for negative impacts on visual amenity and the environment, and the Government sought to address those concerns in 2014 when we introduced a requirement for any agricultural and forestry private way to be notified to planning authorities and the design, layout and method of construction to be agreed by them.

However, we must also consider the needs of farmers and foresters, who must have access to their land for their regular operations, which include planting, harvesting and reaching remote grazing areas. The national parks, national scenic areas and SSSIs that cover something like 20 per cent of Scotland are not empty landscapes, and removing permitted development rights from all of that land would impact on significant numbers of businesses.

For that reason, I believe that the place for considering the amending of permitted development rights is through the GPDO after a proper consultation that gives all parties the chance to have their views heard. The Scottish Government is committed to carrying out a review of the GPDO after the completion of the bill, and we will consider calls for changes to permitted development for private ways alongside other proposals for change. Any proposed changes will be subject to full public consultation.

With my assurance to Mr Simpson that we will review these matters, I call on the committee to reject amendment 165.

**Andy Wightman:** I welcome the minister's restatement of the fact that permitted development rights will be reviewed, and I will certainly make representations to such a review with regard to agriculture and forestry.

However, I must point out that agriculture and forestry are not the subject of amendment 165, which relates to tracks that are built for field sports and shooting. Those applicants are widely flouting the current legislative regime and the intention behind it; essentially, they are lying to planning authorities by saying that the tracks are for agricultural purposes.

One very good example that caused a lot of controversy two or three years ago was on the Ledgowan estate near Achnasheen in Wester Ross. The applicant said that the proposal was for agricultural purposes, and Highland Council accepted that—the council was in no position to be able to refute it, because agricultural activities were taking place on the estate. The evidence, however, that that was a masquerade emerged a couple of years later when the estate—and a very ugly and unsightly track that had been built on it—came on to the market. In an attempt to get more money, the sales particulars say:

"Accessibility to the majority of the hill ground has been transformed by the construction of a network of hill roads. This significantly expands the scope of the stalking to ... those of all levels of physical fitness".

That is absolutely typical of the circumstances in which these tracks are being built all over Scotland. I simply remind the minister that the intention behind amendment 165 is to restate the current law, which, as he has pointed out, requires full planning consent, in a more effective way to deliver the policy intent.

**Kevin Stewart:** I understand what Mr Wightman is trying to do with regard to restating the current law, but his amendment is not worded in that way. This is the difficulty with it. Amendment 165 refers to development that

"consists of the formation or alteration of a private way on land which is ... used for shooting or other field sports".

Land can be used for a number of different things, including agriculture and forestry as well as shooting and field sports. That is the problem with the amendment: the member is not restating the

current situation—he is going beyond it. The wording of the amendment is not right, which causes difficulty.

I am willing to look all the issues in a review of general permitted development rights. However, once again, we have an amendment that would have unintended consequences.

**Andy Wightman:** I accept what the minister says. It is impossible to restate the law exactly as it is—otherwise, there would be no point in an amendment. Amendment 165 changes the focus from the purpose of a track to the land on which the track is constructed. I accept that, as in the case that I just cited, there are different uses going on. The amendment would act as a filter: for the avoidance of doubt, where shooting or field sports are taking place—we can modify the language a bit—that would require full planning consent. That would overcome the issue with the current regime, which provides that tracks are required to have planning consent and is being widely flouted.

I have nothing more to add; I have made the arguments for the amendment and I ask members to support it.

**The Convener:** The question is, that amendment 165 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lennon, Monica (Central Scotland) (Lab)
Wightman, Andy (Lothian) (Green)

**Against**

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

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 165 disagreed to.*

**Kevin Stewart:** Can we have two minutes before we move on to the next group?

**The Convener:** This will be the last group. Is that okay?

**Kevin Stewart:** That is fine.

**The Convener:** Amendment 316, in the name of Patrick Harvie, is in a group on its own.

**Patrick Harvie (Glasgow) (Green):** Good afternoon, colleagues. I hope that this will not take too long. One of the first major pieces of legislation that I had to deal with when I was first elected was the previous planning bill—the Planning etc (Scotland) Bill. It was so much fun that I could not resist the temptation to come back today with one small, modest amendment. It is smaller in scope than the amendments on some of the much bigger issues that the committee has discussed today, but when communities are threatened with the potential loss of a pub that is an important social space in their community, that is a big issue for them.

I draw to members' attention the fact that I am a member of the Campaign for Real Ale—CAMRA—and of the cross-party group on beer and pubs, for which CAMRA is the secretariat. I mention that because CAMRA has been involved in advising me about the drafting of amendment 316.

Amendment 316 is designed to close a loophole that has already been addressed south of the border and could be addressed in Scotland, too. Although the change of use of a pub requires planning permission, in many cases the demolition of a pub does not. That has been used as a loophole to allow pubs to become sites that are used for other purposes, such as housing, without the initial opportunity for the community to say what it thinks of that proposal and to make the case that the pub should continue to be a pub.

This is less of an issue in the urban environment, where demolition is much less likely to be the course of action that is taken. Even in cases where a big-chain pub moves out, such premises are more likely to be reused either as another pub business or as a different kind of business. However, it can be a problem in smaller communities in particular, especially where the pub acts as an important social hub.

What are the potential outcomes? In the best-case scenario, where such action is proposed, the requirement for planning permission would allow the community the time in which to make representations about what it thinks should happen—or potentially even the time to raise the social capital to make a bid to take community ownership of the pub. When it comes to licensing laws, community-owned pubs are run very responsibly. They tend to be very good employers and they tend to be innovative about working with different services and other businesses in the community to create a genuinely social space, rather than just looking to extract maximum profits. They tend not to need to be as profitable in order to be viable, because they have the support of the community around them.

That would be the best-case scenario. It is unlikely to happen in every situation, but we should provide the maximum opportunity for it to happen. The requirement for planning consent would provide an extra opportunity for the community to have its say.

What is the worst-case scenario? It is a community losing its only pub, without the ability to intervene and to say what it thinks about that, and many more people simply drinking at home. It

means not only the loss of that social space but people having less healthy drinking habits.

I hope that the minister, like the UK Government, is willing to close this loophole. If he wishes to approach the issue in a different way from the one that is taken in my amendment, I will be very open to that, but I am grateful to have had the opportunity to flag up this issue and hope that, regardless of the views on the amendment's specific text, there is some agreement around the intention behind my proposal.

I move amendment 316.

**Monica Lennon:** I thank Patrick Harvie for his interest in the bill. I am sympathetic to what he has said about the role of community-owned pubs in bringing people together because, as we know, drinking at home is becoming a bigger problem. However, I am not sure that the approach that he has proposed is necessary, and I am concerned that the amendment has been drawn too widely in covering not only pubs but wine bars and other drinking establishments. That could cover practically anything with an alcohol licence, so it would bring in halls and other types of building. Despite Mr Harvie's eloquence in his statements, I am not convinced by his arguments, and I do not think that I am able to support his amendment.

**Graham Simpson:** Speaking as another member of the cross-party group on beer and pubs, I fully get where Patrick Harvie is coming from, but I agree with Monica Lennon that the amendment has been drafted too widely and will not protect the kind of establishment—the community local—that he wants to protect. The amendment also covers wine bars and other drinking establishments—in other words, anywhere with an alcohol licence—and I just think that that goes too far. I urge Mr Harvie to have a rethink before stage 3, but I will not be supporting his amendment at this point.

**Kevin Stewart:** It is fair to say that I like a good local pub myself but, as with the previous group, I cannot support amendment 316. The issue should be brought forward in our review of the general permitted development order and be subject to full public consultation.

We want a thriving pub sector, because we recognise that a pub can be the focal point of a community. Pubs provide good employment opportunities, create economic activity and are integral to the tourism sector and our night-time economy. I understand the concern that, in some places, a pub closure might mean the loss of a very important amenity, but that is an issue about businesses closing. That might happen for a variety of reasons, and preventing the demolition of a pub under permitted development rights will not in itself do anything to allow a venue to keep thriving.

Amendment 316 would apply to buildings whose last lawful use was as a pub, even if the business had ceased trading some time previously. In some cases, demolition might be necessary if the building has become derelict, although it is worth mentioning that the permitted development rights for demolition do not apply where a building has been allowed to become uninhabitable or unsafe through neglect or deliberate action, if it is practicable to make it safe. The material redevelopment, or change of use, of a pub's location would still require an application for planning permission.

Furthermore, I have referred to pubs throughout my comments. Because there is no definition of "drinking establishment", it is, as others have pointed out, impossible to consider the potential consequences of the amendment on any location where drink is taken, including restaurants, coffee bars—the list goes on.

I consider the amendment to be too sweeping, and I do not believe that it is the right way to support those pubs that provide a hub for the local community. I therefore ask the committee not to support it. As I have said, I think that we can deal with the issue when we review, with full public consultation, the rights under the general permitted development order.

12:15

**Patrick Harvie:** I do not want to take up too much time, convener. I am grateful that the minister recognises that there is an issue, and that there might be other ways of addressing it. I am happy to ask the committee's permission to withdraw the amendment for the time being, with a view to raising the issue either at stage 3 or in some other context, and I am also happy to write to the minister about how we might move forward in that respect.

*Amendment 316, by agreement, withdrawn.*

**The Convener:** That concludes today's stage 2 consideration of the Planning (Scotland) Bill. I thank the minister—particularly for his use of the phrase "panda love", which is something that I never thought I would hear—his officials and all the other MSPs who attended the meeting. Day 6 of stage 2 will take place on 7 November, and any remaining amendments to the bill should be lodged by 12 noon on Thursday 1 November.

I suspend the meeting briefly to allow the minister, his officials and other members to leave the table.

12:16

*Meeting suspended.*

12:18

*On resuming—*

# Subordinate Legislation

## Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2018 (SSI 2018/292)

**The Convener:** Item 3 is consideration of subordinate legislation. I refer members to paper 3. As the instrument has been laid under the negative procedure, its provisions will come into force unless the Parliament votes on a motion to annul it. No such motion has been lodged, and the Delegated Powers and Law Reform Committee has not drawn the instrument to the Parliament's attention on any of its reporting grounds.

If members have no comments to make, does the committee agree not to make any recommendations in relation to this instrument?

**Members** *indicated agreement.*

**The Convener:** We now move into private session.

12:19

*Meeting continued in private until 12:46.*

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