OFFICIAL REPORT
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Local Government and Communities Committee

Wednesday 7 November 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 7 November 2018

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
30th 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:

Claudia Beamish (South Scotland) (Lab)
Alex Cole-Hamilton (Edinburgh Western) (LD)
Ruth Maguire (Cunninghame South) (SNP)
Alex Rowley (Mid Scotland and Fife) (Lab)
Kevin Stewart (Minister for Local Government, Housing and Planning)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Local Government and Communities Committee

Wednesday 7 November 2018

[The Convener opened the meeting at 09:16]

Decision on Taking Business in Private

The Convener (James Dornan): Good morning. I welcome everyone to the 30th meeting of the Local Government and Communities Committee in 2018 and remind everyone to turn off their mobile phones. As meeting papers are provided in digital format, as always, members may use tablets during the meeting.

Under agenda item 1, does the committee agree to take item 3, on the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill, in private?

Members *indicated agreement.*

Planning (Scotland) Bill: Stage 2

09:17

The Convener: This is day 6 of stage 2 of the Planning (Scotland) Bill. Once again, I welcome the Minister for Local Government, Housing and Planning, Kevin Stewart, and his accompanying officials. Again, some members of the Scottish Parliament who are not members of the committee but have lodged amendments to the bill will be in attendance today, and they are very welcome. I welcome Alex Rowley.

After section 16

The Convener: Amendment 58, in the name of Andy Wightman, is grouped with amendment 58A.

Andy Wightman (Lothian) (Green): Amendment 58 is connected to amendments in the next group, on appeal rights, which we will discuss shortly. The trigger for appeal rights in my amendments 59 and 60, which are in the next group, depends on the answer to the question that is posed by amendment 58—namely, whether the application is in accordance with the development plan. That is the key criterion that determines the eligibility of any determination to be appealed under the provisions of amendments 59 and 60.

Amendment 58 merely requires that, as part of the notice of a planning authority's decision on the application, a statement be included as to whether, in the planning authority's opinion, it is in accordance with the development plan. Critics have pointed out—and I have no doubt that the minister will point this out this morning—that that is not an easy judgment to make in many cases in Scotland's highly discretionary planning system. That is a fair criticism in some instances and it is why amendment 58 would leave it to the authority to make the decision as it sees fit.

Section 37 of the Town and Country Planning (Scotland) Act 1997 stipulates that, in dealing with an application for development, the planning authority

"shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations."

Planning authorities therefore routinely make such assessments, and by obliging them to make a statement on them, we will nudge the planning system towards a less discretionary and more plan-led approach.

I support Monica Lennon's amendment 58A.

I move amendment 58.

Monica Lennon (Central Scotland) (Lab): Amendment 58A seeks to add a point of

clarification to Andy Wightman's amendment 58. Amendment 58 would make it necessary for planning authorities to give a statement on whether an application is in accordance with the development plan. Amendment 58A makes it clear that the statement must include an explanation of why the authority has reached that view. To me, it is a simple change that will increase transparency in the system and make it clear to the public which applications are in accordance with the development plan.

We will come on to discuss appeal rights later in the meeting, but the amendments make sense if we are to make changes in the appeal system and give more weight to a plan-led approach. I will come on to my arguments on appeals but, in the hypothetical situation in which we have a system of appeals that is led by accordance with the plan, it is fair and reasonable that there should be an easy way of accessing that type of information. For example, if lots of applications come forward for housing developments on sites that are not in the plan, the amendments could provide a useful indicator or tool for planners in considering where the development plan needs to be amended.

I move amendment 58A.

Graham Simpson (Central Scotland) (Con): I thank Andy Wightman and Monica Lennon for the amendments. We will come on to appeals, but the two amendments do not mention appeals; they merely mention making a statement on whether an application is in accordance with the development plan. We used to have that system not so long ago and, in my view, councils did not find that a difficult decision to make—it should not be a difficult decision; it should be relatively straightforward. Agreeing to the two amendments would give people more clarity. Members of the public often struggle to understand why certain decisions have been made. By supporting the two amendments, which we will do, we will help to clear things up for people. We want a system that people can trust. By supporting the amendments, we will add to that trust, which has to be a good thing.

The Minister for Local Government, Housing and Planning (Kevin Stewart): Superficially, amendments 58 and 58A seem to be fairly minor and straightforward. They set out what a planning authority must state in its decision notice. However, there are two important reasons why I do not support the amendments.

First, section 37 of the 1997 act requires a planning authority to

"have regard to the provisions of the development plan ... and to any other material considerations"

when making a decision on a planning application. That is a long-standing requirement of our planning system. It is at the heart of the system. Section 25 of the act then provides that the decision on the application is to be made in accordance with the development plan, unless material considerations indicate otherwise.

Every decision on every application involves the decision maker reaching a conclusion about whether and how the proposed development accords with the development plan. The decision maker has to consider that alongside an assessment of other material considerations and then decide whether those considerations, individually or collectively, outweigh the position with development plan conformity.

Authorities are already required by section 43(1A) of the 1997 act to give reasons for their decision in the decision notice. In addition, the planning authority must place a report on the register of applications setting out the provisions of the development plan and the other material considerations to which it has had regard in making its decision. Therefore, the full basis and context for a decision must already be recorded. Conformity with the development plan is only part of the picture.

Secondly, I am concerned about the way in which it has been proposed, including in the amendments that we will discuss in the next group, that appeal rights should be linked to whether the development is in accordance with the development plan. Although in some cases it will be relatively clear whether a particular proposed development is in accordance with the development plan, in many other cases that will not be the case. In those cases, the question whether a proposal accords with the development plan can involve complex and finely balanced interpretation and professional judgment, and different parties can reach different but entirely reasonable views.

Although the development plan is key in guiding and directing future development, it cannot anticipate or allocate land for every possible scenario for future development. Sometimes very reasonable proposals that have not been considered or led through the plan can come forward.

Development plans may contain broad statements of policy, some of which may lend support to a particular development, whereas others may do the opposite. In that particular case, one must give way to another.

In addition, the provisions of a development plan may be framed so that their application to particular circumstances requires the exercise of judgment by the planning authority. There may reasonably be a difference of opinion on the question, and that may be the key point on which an appeal turns. Therefore, it cannot be

appropriate to use the authority's judgment on that point as the criterion for whether its decision can be appealed.

As Ms Lennon is well aware, planning is both a science and an art, and decisions are often complex and multifactored. Planning is not a simple tick-box exercise with a pass or fail mark. I want to see good planning decisions being made thoughtfully and transparently, taking into account all the relevant issues and respecting the professional judgment of planners and the democratic remit of elected members.

I am happy to look at how we can improve transparency and help people to understand the basis on which decisions have been made. However, the amendments are based on and contribute to an oversimplified understanding of the process by focusing on just one part of the story of any application and the decision made on it. I ask the committee to reject the amendments.

Andy Wightman: The minister concluded by saying that the amendments focus on one part of the story. They absolutely do. They focus on the part of the story that is incredibly important—that is, the development plan. We are trying to pass legislation that strengthens the role of the development plan. I and, I think, some of my colleagues, would also like to see quite a big shift towards a much more plan-led system with much less discretion.

The minister correctly pointed out that decision makers make decisions about whether applications should be granted with respect to development plans unless material considerations indicate otherwise. That is absolutely correct, and the minister was absolutely correct to say that those other considerations play into the decision. There is nothing in my amendment that suggests otherwise; all that it seeks to do is place a duty on the planning authority to "include a statement" on whether its decision on an application accords with the development plan. That is one bit of the story, but it is an incredibly important bit of it. That would leave the judgment to the authority alone and, as Graham Simpson said, assist the public to understand the perfectly reasonable cases that the minister has cited in which, for a variety of reasons, a departure from the plan may be well in order. Because there is a link to appeal rights, it is precisely those circumstances in which effort has gone into making a plan and departures are made, possibly for very good reasons, that are the trigger for having a second look at the matter. We will get on to that when we consider the next group.

That is one part of the story, but it is a very important part of it. I hope that, over time, an assessment of the extent to which applications are in accordance with the plan will help the plan-led system and the process of developing development plans.

09:30

Monica Lennon: I agree with Andy Wightman. It is really simple. The issue is about the planning authority providing a statement of fact—it does not have to rehearse all the arguments around an individual application. Once the decision has been taken by the planning authority, it should provide a simple statement on whether the decision was in accordance with the development plan and if not, provide a reason for that. That commentary is usually set out somewhere in a committee report, but rather than the public having to scour through dozens of sheets of paper on planning portals, there would be a simple reference to show whether a decision was or was not in accordance with the development plan.

I appreciate that a great deal of skill and professional judgment is involved in coming to a decision. Not everyone will accept the decision or the reasoning. However, it is important that the planning authority is accountable for any decision that it has taken and can give a simple statement of fact on whether the decision accords with the development plan. On many occasions, the decision will not be in accordance with the development plan, but that is something that we have to accept in a highly discretionary planning system.

As Graham Simpson suggested, it is not an onerous duty on planning authorities; rather, it is a neat way to provide closure on any application. I press amendment 58A.

The Convener: The question is, that amendment 58A 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 58A agreed to.

The Convener: The question is that amendment 58, as amended, 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 58, as amended, agreed to.

Amendment 262 moved—[Kevin Stewart]—and agreed to.

The Convener: Amendment 51, in the name of Alex Rowley, is grouped with amendments 59, 60, 92, 143, 325 and 319.

Alex Rowley (Mid Scotland and Fife) (Lab): The minister said that the planning process is both a science and an art. The planning process must be transparent and people need to have confidence that the system will deliver. If amendments 51 and 92 are agreed to, they may need to be tidied up at stage 3, but the principle behind them is based on my first-hand experiences and those that I have been told about by many people.

There is an argument that if the planning system is front loaded and set up in a way that is transparent, communities will have the opportunity to provide input and have their say through a democratic process. That input will go to councillors—both councillors in general and those on the planning committee—and the system will then produce a local development plan that has arisen from what people wanted to say and from the input of communities. That means that we will all have had our say and we will have a development plan that sets the way forward with our communities.

In my recent experience of the Fife development plan, the ink was barely dry on the paper when developers started to put in applications for housing developments on land that was not included in the development plan. Developers and landowners had tried to get that land included initially, but during the front-loaded consultation process, communities had held local consultation meetings with the planning authority and had put forward their views; the area committees and the council had then had their say and had decided against it.

It seems as though that meant nothing because, at the end of the day, along comes a developer who makes a different argument and, even though the authority then refuses the application on the material ground that it is not within the local development plans, it can be called in by the Scottish Government reporter and can be approved. We have seen that in Inverkeithing and in Aberdour; we have seen it in many parts of Fife, and I am sure that we have seen it in many other parts of Scotland.

The argument about front loading the consultation might be correct and people might be involved in that process, but despite that the developer can come in with an application. My amendment 92 proposes that there should be

"no right of appeal for development on land that has not been allocated for development in the local development plan".

Alternatively, under amendment 51, if the land has not been included for consideration in the development plan, equal right of appeal should apply to those who have objected and have been part of the process but who then seem to be ignored at the last stage.

That is the main argument—if we accept the principle of front loading, in which people have the opportunity to be involved and to shape the development plan for the future, surely it cannot be right that the plan can just be ignored; that when the ink is not yet dry, the developer can apply again regardless; and that the developer has the right to appeal but those who have been involved in the process have no rights. That is the principled argument upon which my amendments are based.

I move amendment 51.

Andy Wightman: As members know, there has been a long debate about whether to reform appeal rights in the Scottish planning system. Current appeal rights date from 1947—70 years ago—when applicants, who were typically landowners, were suspicious of the ability of public authorities to make decisions about development that they had hitherto made.

The right to develop one's own property was being removed from the owner. That was the nationalisation of development rights, which was a radical and very welcome step. Because that happened, it was conceded that a right of appeal should be granted against any refusal to grant planning consent.

Today, we have a highly developed plan-led system and there is no requirement for appeals to be universally available to applicants. Equally, there is a strong argument for providing a limited right of appeal to third parties.

The debate on third-party right of appeal has moved on considerably since the debate around the Planning etc (Scotland) Act 2006 and is now focused on equalising the rights of appeal by first

providing a limited right of appeal to third parties and by restricting the existing right of appeal to applicants.

In a proper plan-led system, there should be no right of appeal at all—the plan should make clear what is permitted and what is not. However, we are still in the world of discretion, material considerations and unallocated sites.

My amendments 59 and 60 mirror each other. Amendment 59 provides that where a planning authority gives notice that an application is not in accordance with the development plan under the provisions of amendment 58, which we have just debated, the existing appeal rights of applicants would be removed. In other words, there is no right of appeal on an application that violates the development plan—the instance that Alex Rowley indicated. The right of appeal remains open to applicants when a planning authority refuses consent for an application that is in accordance with the development plan.

Such a move would strengthen the plan-led system and provide greater clarity and certainty, as well as eliminating confusion and delay at the end of the process. As Malcolm Fraser told us in his evidence at stage 1:

"As an architect, I have been told many times by planners that they are going to turn something down but I will win on appeal. That is simply unacceptable. It extends the process, allows developments to become worse, allows lawyers and consultants to make money out of the tail end of the process, and holds back development."—[*Official Report, Local Government and Communities Committee*, 7 March 2018; c 61.]

Amendment 60 would introduce a similar right to third parties to appeal determinations in the circumstances set out in proposed section 47(2B) of the 1997 act, most particularly where consent is granted to an application that is not in accordance with the development plan and where a decision is made on land in which the planning authority has an interest. Such rights of appeal are open only to those who made representations on the application or a community council.

The debate has matured over recent years and, through conversations with members, I am aware that some people still frame the issue in the terms that were used 10 years ago. It is abundantly clear that the current system of appeals is undermining local democratic decision making by allowing legitimate decisions to be appealed against the wishes of local communities, whose planning authorities are upholding agreed plans. It is time to grasp that nettle.

The proposals that are outlined in amendments 59 and 60, as well as those in Monica Lennon's amendment 143, represent a proportionate, limited and logical framework in which to modernise appeal rights.

I will not vote for Alex Rowley's amendment 51, because it would leave open the possibility of anyone who makes representations on an application appealing the decision if, in their opinion, the decision breaches the local development plan. Leaving that up to the opinion of individuals is not appropriate and risks undermining the legitimate decision-making process of the planning authority.

I will speak briefly to amendment 325, which I will not move—it is a probing amendment. There are several undeveloped elements of the amendment, but it is complete enough to serve its purpose in exploring what might be done to planning determinations that are subsequently found to have been made by persons who have been found guilty of criminal offences in connection with the decision-making process. I welcome the minister's comments on amendment 325.

Monica Lennon: Every time the committee has debated the Planning (Scotland) Bill, I have needed to refer to my entry in the register of members' interests in order to stick to the Parliament's rules. My relevant interest is that I am a member of the Royal Town Planning Institute. I started studying to be a planner more than 21 years ago, and I did not expect that I would be sitting in our national Parliament, helping to shape our planning laws. It could be said that my gravitation into politics is an unintended consequence of what attracted me to planning in the first place and what has frustrated me about the planning system.

Planning excites me—I think that it excites a lot of us—because of the possibilities that it can unlock. It is about making decisions today that will lead to better places tomorrow, for generations to come. Planning also frustrates me. Even when I was 16 and starting my planning studies, I realised that, although planning decisions affect all of us, the planning system needs to be accountable to all of us. In reality, too often planning decisions and processes satisfy powerful interests. I am sure that we can all think of examples in which that has led to planning outcomes that do not best serve the needs of people and communities. We cannot go back and change those decisions, but we can rebalance the system.

I have argued that there should be a purpose for planning in the bill, because we need to be clear that planning is about the public interest; it does not exist simply to serve the wishes of applicants or those who pay a fee. I have argued for a rights-based approach to planning, and I have talked about the importance of being serious about equality—equality impact assessments are one tool that planners can use. We also need to realise that planning has an important and unique role in

improving public health. Those are important principles that planning can deliver in practice.

I appreciate that not everyone around the room has agreed with my amendments. I know that I will need to keep working on some of my proposals at stage 3.

We can go back to the *Official Report* from 2005—many of us have done so. Although planning has modernised, a lot of frustration remains. Front loading was supposed to be a step change and to empower communities. From the evidence that the committee has heard, very few communities have said that that has worked in practice.

I believe strongly that any regulatory system needs to have appropriate checks and balances. In planning, we have an appeals system. I do not want to abolish the appeals system—I know that some people do—but I do not accept that it is credible to keep the status quo. From the evidence that we have heard, the people who want to keep things exactly as they are, in the main, are people who make appeals and who, not always but often, benefit from the appeals system. They want the system to be left alone; they do not even want us to look at it or talk about it through the bill process.

Others, such as some planning authority staff, are nervous of change. In fact, they are nervous of any change in the bill, because they already feel underresourced, overworked and under pressure. However, in speaking to amendment 143 in my name, I emphasise that, if we are serious about planning reform, it is not credible to ignore the appeals system.

09:45

Lots of people argue that giving communities a right of appeal would lead to more conflict in the system, which I think is unfair. I thank some of the members of the public who are in the gallery and the hundreds of people who have been emailing us. Communities and people are sometimes unfairly characterised and brushed off as nimbys—"Not in my back yard" people—who are against development. I can see Kenny Gibson nodding, and I know that he has concerns about that. There are some people who think very selfishly and only about their interests, but the people who have sent us emails and those who are in the public gallery represent the diversity of people across Scotland. People have emailed today to say that they cannot come to the meeting because of childcare responsibilities, and older people and people with disabilities have not been able to get to Parliament for the early start this morning. We have also had emails from people with expertise and who have worked in the system. It is important to set out some of that background to amendment 143.

When we talk about appeals, we are often criticised for focusing on the end of the process. However, those who engaged on the issue in 2005, a lot of whom have come back to give evidence this time, were willing to give the reform a chance and to put their faith in front loading, but it has not worked. My proposals are to reform the system and to strengthen a plan-led approach. That does not involve removing the applicant right of appeal, but that right should be more limited in scope and it should be linked to the development plan. If applicants are told at an early stage that their proposals are not in the plan, particularly if it is a fairly new plan, they can take their chances and make the application but they should forfeit their right to appeal. Last week, we had a debate about repeat applications and we have heard a lot of evidence about the pressure that it puts on the system and communities when applicants keep coming back to try to wear down planners.

I have looked back at the debates in 2005, and I sympathise with the decisions that were taken, but things have shifted since then. The Scottish Government must be commended for the approach that it has taken to community empowerment, which a lot of us agree with. We have to get away from looking at communities as the third party in the planning system, which is why my amendment seeks to equalise appeals and to put things on not exactly an equal footing but more of an even footing. It is time that, in certain circumstances, we allowed communities a right of appeal. The amendment is proportionate and would not apply to every application. It is not about a form of mediation between neighbours or about very minor changes; it is about major national applications, which can have long-lasting impacts, as we have all talked about. We all want our planning system to have the best reputation and to lead to the best outcomes. If an applicant has a seriously good proposal that has merit but which might not stick completely to the development plan, they should not be frightened of a second look at that proposal.

I know that we probably do not have a majority of members in favour of the amendment, but I hope that, whatever side of the debate members are on, they will respect the evidence that we have heard from communities in all their diversity and from every part of Scotland and that we will not just close down the debate today. I hope that we can find some compromise at stage 3, because it is not credible and does not do justice to our planning system if we try to shut down the debate and do not seek to make changes to the planning appeals system.

I would like there to be an overall reduction in the number of planning appeals, because they have resource implications for planning authorities, especially when there is a long process. In an example in my community, the appeal sat with the director of planning and environmental appeals for over a year. I will not go into detail on that as it is a live issue, but the situation has been worrying the community in my area since 2013 even though what has been proposed was speculative, was not in the development plan, does not have merit and does not meet national guidelines. It is having an impact on some of the most vulnerable people—people whom we want to protect.

It is not a good use of anyone's time, including the minister's time, for such applications to keep coming back. It undermines the confidence that Alex Rowley kicked off by talking about. If we want to improve confidence in the planning system, we have to reform the appeals system. Thank you for your indulgence, convener. *[Interruption.]*

The Convener: Excuse me. This is not a football match. There should be no applause and I ask people in the public gallery to keep as quiet as they can. Thank you.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good morning. It is nice to be back with the committee today. My amendment 319 sets out Liberal Democrat policy on appeal rights, which we arrived at over several party conferences and in discussion with our council groups, our activists and experts in the planning arena. The amendment seeks to bring an end to reporters being able to arrive at a completely different decision from that which has been reached by elected local councillors on a planning committee, based on exactly the same policies, material considerations and background information. Instead, reporters would assess only whether the determination by the planning committee had been reasonable. That would mean that reporters would no longer be able to change or reverse a decision that was reasonable.

The committee will be aware that there is already an established reasonableness test that is used to determine whether costs should be awarded against the council and to the appellant, so we are not really creating anything terribly new. If the grounds for appeal are limited to the challenging of unreasonable decisions by elected councillors, we will reduce the chance of developers automatically appealing in the hope that a remote official, who might be unconnected to the communities that are affected, will come to a different conclusion.

Andy Wightman: Will the member take an intervention?

Alex Cole-Hamilton: I am happy to take an intervention from Andy Wightman.

Andy Wightman: I thank Alex Cole-Hamilton and apologise for not addressing his amendment 319 in my opening remarks. I had intended to address it.

The language that amendment 319 uses, including the phrases

"manifestly unreasonable in all the circumstances"

and, in particular,

"no reasonable person acting reasonably in those circumstances could have made that decision"

speaks to me of the Wednesbury unreasonableness test in judicial review. Is that not more appropriate as a test of the lawfulness of decision making rather than the merits of applications on appeal?

Alex Cole-Hamilton: As I said, we already have a reasonableness test in planning appeals, on the basis of where costs are awarded, so we are not necessarily reinventing the wheel in relation to reasonableness. I defer to Andy Wightman's superior knowledge of the matter and I am grateful to him for his tutelage during our consideration of the bill, but I do not think that the proposal goes to the extent that he describes. I am grateful for his intervention, as I think that it is important to clarify that point.

The Lib Dems have consistently made the case for decisions being made closer to the people who are affected by them, including local authorities and local communities. Communities feel disenfranchised by the current appeals system. We have heard a lot about that today, and people in the public gallery believe that, too. When appeal decisions are taken centrally by Scottish Government reporters and ministers, members of the community who have been fully engaged in the earlier stages feel excluded, and the approach fails to respect local decision making or ensure that communities have a real voice in the decisions that affect them.

Annabelle Ewing (Cowdenbeath) (SNP): I have listened carefully to what members have said, but I am afraid that I cannot support the amendments in this group. The committee has received many emails on the third-party right of appeal, and I note that—to list just some of those who have emailed us—the convener of the Royal Town Planning Institute takes the same view, as do Heads of Planning Scotland, Homes for Scotland, the Institution of Civil Engineers Scotland, the Royal Incorporation of Architects in Scotland, the Royal Institution of Chartered Surveyors, the Scottish Mediation Network, the Scottish Property Federation, the Scotland's

Towns partnership, Planning Aid Scotland and Scottish Renewables.

As a matter of law, the planning system has, on the one hand, the broad public interest, represented by the role of Government—local planning authorities, ministers and civil servants—and, on the other hand, the interests of the private applicant. In essence, that is how the system is designed.

Can there be—

Andy Wightman: Will the member take an intervention?

Annabelle Ewing: Certainly.

Andy Wightman: The planning system, as the bill makes clear, is not a contest between decision makers and private interests; it is about making provision for how land is developed and used. The private interest of the applicant is irrelevant in the planning system. The planning system is about how we allocate land in the public interest.

Annabelle Ewing: Okay, but at its core, the planning system has those participants—players—who have their respective interests.

Do I think that the planning system can and should be improved? I absolutely do. I have received representations from constituents who have strong opinions on the subject, many of them having been affected by serial applications and so forth. I recently had a discussion with some of those constituents about the third-party right of appeal.

I strongly believe that the system should be improved, and I see in the bill a number of important improvements that will ensure that individuals can make their voices heard, such as the provisions on a front-loaded approach to engagement and the role of the local place plan.

I understand, too, that new statutory guidelines on effective community engagement will be produced in due course. I look forward to the minister clarifying that point when he speaks to the amendments in the group.

I also understand that the independent planning review panel favoured the front loading of the engagement of local people over the introduction of more appeals into the end of the process.

Serial applications are a huge bugbear, about which I spoke at our meeting last week or the week before. I was pleased that the Government lodged an amendment, to which the committee agreed, that tackles serial applications by extending from two years to five years the period in which the local planning authority has discretion to refuse to determine a similar application. As I said then, it is important that local authorities exercise that discretion, because in doing so they will better serve the interests of the public, whom they are there to serve.

Members have sought to make comparisons with other jurisdictions. Doing that is always fraught with difficulties, because when we drill down we find that the other jurisdiction does not have an identical system and the comparison falls down. It is worth noting that there is no third-party right of appeal anywhere else in the United Kingdom.

Finally, some of the amendments in the group are not clearly drafted, and some take a carve-out approach, whereby they would give a third-party right of appeal to some people and not others. Such an approach is inherently incoherent—I am sorry; I am a lawyer by trade—and does not address the interests of people who feel strongly that there should be a third-party right of appeal. It is a halfway house, which does not make much sense.

Monica Lennon: Will Annabelle Ewing take an intervention?

Annabelle Ewing: I am winding up, but I can take a brief one.

Monica Lennon: Given Annabelle Ewing's legal background and expertise, perhaps she can say how we can improve access to environmental justice for communities that are being subjected to repeat applications—for example, for incinerators—when an applicant will have—

The Convener: Let us concentrate on the amendments. We talked about repeat applications last week.

10:00

Monica Lennon: Okay. There is an appeal at the moment, convener. The applicant will always have the right of appeal. The applicant has 100 per cent of the appeal rights, and communities have zero. Where is the justice and balance in that?

Annabelle Ewing: I was talking specifically about the amendments that seek to carve out rights of appeal for third parties so that only some people would get them and some would not, depending on the circumstances. I see that as incoherent, and I do not see that it addresses the strongly held—

Monica Lennon: But—

Annabelle Ewing: I am sorry, but I really have to wind up. I know that other members have comments to make.

I do not see that that really addresses the strongly held views of those who believe that there should be erga omnes a third-party right of appeal.

On environmental rights, there are, of course, protective expenses orders, which have played an important role in ensuring access to justice for those who seek to make their case on environmental grounds.

In conclusion, I believe that the general public interest requires that we see more homes and sustainable economic development in Scotland. I fear that the amendments put those things at risk and could significantly discourage development and investment in Scotland. That would not be to the benefit of all the people of Scotland, so I cannot support the amendments as drafted.

The Convener: I call Kenny Gibson.

Kenneth Gibson (Cunninghame North) (SNP): Thank you, convener. [*Interruption*.]

The Convener: Excuse me. It is the committee that deals with these issues. Will people at the back please be quiet? I will have to clear the public gallery otherwise.

Kenneth Gibson: The planning system has to deliver much-needed homes, places of work and facilities, which often exist only because they have been approved on appeal.

Annabelle Ewing listed a number of organisations that have made it clear that they oppose the amendments. We took compelling evidence from Homes for Scotland, which is one of those organisations. It pointed out that 40 per cent of the houses that were built in Scotland last year would not have been built had there been no right of appeal. They are houses that people live in, and people were employed to build them. Many of the homes that are built settle in and become well-established parts of communities. They are often in areas of Scotland in which there are chronic housing shortages.

It is interesting that Monica Lennon mentioned her registered interest as a member of the Royal Town Planning Institute, which is, as Annabelle Ewing pointed out, strongly against the amendments. [*Interruption*.]

The Convener: Excuse me. This is the last warning. If anybody else shouts from the public gallery, I will ask that the public gallery be cleared. We are trying to get on with some serious business.

Kenneth Gibson: The RTPI said that the amendments would, for example,

"further widen inequality in our communities by disproportionally favouring those with the capacity, time and resources to pursue an appeal",

lead to

"seldom-heard voices in the planning system"

being "further marginalised",

"weaken constructive early engagement"—

that has already been talked about—

"undermine democratically elected planning authorities' responsibility to ensure planning decisions are taken locally in the public interest"

and

"clog up the planning system".

I should point out that we heard in evidence that only 12 per cent of council refusals are overturned. It is not as if there will be automatic approval simply because there is a third-party right of appeal. That is not the case at all.

Heads of Planning Scotland said that, in its view,

"various proposals to introduce an equal right of appeal, or a third-party right of appeal, would be counterproductive to establishing an effective and efficient planning system that acts in the long-term public interest. That would simply make the system more complicated."

It also spoke about some of the other issues that have already been mentioned, and Homes for Scotland said that such a right would be

"catastrophic in terms of jobs, investment and house construction in Scotland."

I oppose each of the amendments that have been lodged in this group.

Graham Simpson: Throughout stage 2, I have said that I want to see a system in which people—not stakeholders, but real people—are fully involved in the planning process, so that conflicts are kept to a minimum. I have also said that the bill does not fit the bill as far as front loading is concerned. I am continuing to work on proposals that will improve those aspects, which I will lodge at stage 3.

There is no doubt that the present system is lopsided. Communities are not involved in shaping their areas to any great extent and developers are able to tick a box by holding ill-publicised and poorly attended pre-application events. It is therefore little wonder that people get annoyed when things appear seemingly out of the blue.

Only applicants can make an appeal. We have a situation where one person—a Government-appointed reporter—can overturn a locally taken democratic decision. It all feels unsatisfactory, and it is little wonder that people want to change the system.

Running counter to that is the argument—this also has merit, and it was very well expressed by Annabelle Ewing and Kenny Gibson—that allowing third parties to appeal consent decisions will scare the horses and slow up a system that already operates at snail's pace.

There are valid arguments on both sides, and they both need to be heard with respect. The key question for the committee is whether equal rights of appeal would lead to a more robust plan-led system that encourages more meaningful up-front engagement and agreement between communities and developers, or whether their implementation would lead to delays and reduce early engagement and investment in housing and development.

The Government has not addressed any of those issues; they are not mentioned in the bill. In our manifesto for last year's local government elections, we said that we should end appeals that are heard centrally if applications and decisions are in line with development plans, which is why we supported amendments 58 and 58A. Those appeals should be heard only by the full council or by a local appeals committee—in other words, issues should be dealt with locally.

Let me be frank and up front about where my party is on the issue of appeal rights. We have differences of opinion. Those same differences exist in the Scottish National Party and in the Labour Party—they have always existed. We will come to a view, but for now we are keeping our counsel and will abstain if we are required to vote on the amendments in this group.

I assure members that we will demand changes at stage 3 that put real people—not stakeholders, not the vested interests that I described in the stage 1 debate, not the minister or his civil servants and not the planning industry bloggers who think that they know best—at the heart of the planning system. I have ready-made amendments if I am not satisfied. It is really up to minister to engage on the issue. I want to see a system that delivers development in the right places and with maximum community buy-in. The bill does not deliver that.

Far from shutting down the debate, I believe that, as Monica Lennon suggested, the debate needs to continue. There is still much work to do, but we must get this aspect right for stage 3.

Alexander Stewart (Mid Scotland and Fife) (Con): I concur with many of Graham Simpson's comments this morning. This is a very passionate debate. Communities the length and breadth of the country have made representations and we have heard from others that organisations have also made their views plainly known. They all perceive that the system is flawed and that the situation must be managed.

At the moment, there is the potential to stifle development. Equally, communities do not feel that they are part of the process or being given the opportunities that they want. It is vital to continue to look at the issue. It is too important for us to get wrong; there should be no knee-jerk reactions.

There is no question but that the process upsets people. We have had lots of information and lots of correspondence. People are very passionate about the issue. Individual members of the committee have a duty to ensure that we can do all that we can in the process, so—

Monica Lennon: Will the member take an intervention?

Alexander Stewart: I am happy to do so.

Monica Lennon: I am the convener of the cross-party group on construction, so I am very motivated to ensure that we have the right development and infrastructure for Scotland. Today, we are hearing both sides of the story and about some of the behaviours that people perceive or experience in their communities. I wonder whether there is an opportunity for some of the stakeholders and the establishment bodies that have been rhymed off to think about that.

When the 2006 act was passed, it brought in measures to front load the process and have that early engagement. Graham Simpson has talked about poorly attended community meetings and we have to think about why that happens. People continue to believe that it is a tick-box exercise. Would Alexander Stewart agree that there is an opportunity for Homes for Scotland to speak to its members and other organisations to try to do something about that, before we get to stage 3?

Alexander Stewart: I agree. There needs to be much more dialogue, discussion and debate around the whole process. We want to ensure that we get it right for individuals, communities and organisations. At the moment, we are stuck. We are not at the stage of getting it correct. We need to go back and discuss and rethink. I hope that that dialogue will take place so that, when we reach stage 3, we have proposals that we all feel more comfortable signing up to, given the representations that we have had from communities and others.

Kevin Stewart: There is a lot for me to get my teeth into there. I will start with the comments of Mr Simpson. Yesterday, I noticed that Mr Simpson tweeted about a survey of his that highlighted the importance of engaging with local people in relation to an application for planning permission in principle. I will not go on about the individual application, because I do not know at what stage it is currently. I completely agree that effective and meaningful engagement with people across our communities is vital. We need to properly understand the views, aspirations and strength of feeling, rather than just hearing from those who shout the loudest.

Graham Simpson: You helpfully mentioned my tweet, minister. It was about an application that, at that time, had not yet been made to develop an area of land in North Lanarkshire. I figured out that the potential developer would not have told many people about the application, which turned out to be true. I leafleted a very large estate, making people aware of the application. I did not say what people should think one way or the other. I told them about the pre-application meeting. Lots of people turned up at that meeting and far more people than would have done otherwise expressed a view to the council. The result was probably 50:50. I will not say who the developer was, but it was grateful for what I had done.

I have discussed the issue with big builders recently and part of the problem is that they are not reaching out and telling enough people what is coming up. People will not necessarily be against what they have got planned. We need to work with people, and that is not happening at the moment.

Kevin Stewart: I do not disagree with any of that. I handle such things regularly in my constituency and I did so frequently when I was a councillor. Ms Ewing mentioned effective community engagement and further guidance. I assure her that we will do everything possible to get that engagement right. The committee has already agreed an amendment in the name of Graham Simpson on guidance on effective community engagement and I was happy for us to support that.

I will tell the committee a story that I have told on several occasions. We sometimes find ourselves in situations that are rather confusing. Not long after I was appointed to my current post, I went into a room and an older woman told me straight off, "Housing minister, you need to build more houses," but the next sentence was, "You canna build them here, here, here and here."

10:15

I have talked about the level of engagement that we have in community planning, in which we set parameters and give reasons why certain things need to be done in areas. We should look to do the same with spatial planning to bring the level of community engagement up to the level of engagement that happens with community planning, particularly in the areas of the country that punch above their weight on that.

Some other things have been mentioned in comments. On 31 October, John Finnie said to the committee that, with certain applications, local people

"will protest and local members will follow the views of the community."—[*Official Report, Local Government and Communities Committee,* 31 October 2018; c 54.]

That can be irrespective of the development plan, and it illustrates why the right of appeal remains key to the planning system. Malcolm Fraser may have had a similar situation in mind when he talked to the committee. I do not want to assume anything, but he may well have been talking about that kind of situation.

I want stronger and clearer development plans; elected member training so that elected members know exactly what to expect and what is required; and performance provisions. Together, those can lead to a reduction in the need for appeals by applicants.

Andy Wightman: If the minister believes that that would lead to a reduction, why can he not see the argument for reflecting that reduction in the bill? At the moment, appeals can be made by any applicant. I agree that there should be fewer of them, and I hope that that will be the case, but it seems reasonable to attempt to secure that intention through the bill.

Kevin Stewart: If we are to get fewer appeals, we need to go along the path of early engagement, which Mr Simpson talked about. That scenario has been agreed by the Government and others. For example, Henry McLeish, writing as the chair of the Scottish alliance for people and places, which includes a number of the organisations that members have mentioned, said:

"All of us agree that we need to bring people and planning closer together to agree a shared vision for the places in which we live, work and play, rather than simply opposing what we do not wish to see.

However ... our members agree with the Scottish Government's position that changing arrangements for planning appeals is not the means by which we can best hope to achieve this outcome."

Further, Petra Biberbach of PAS said:

"I would say that a third-party right of appeal exacerbates conflict, it undermines the goal of very early engagement, which is what we want to see between all parties, and it would undermine a plan-led system."—[*Official Report, Local Government and Communities Committee,* 28 February 2018; c 38.]

The Government has been clear on a third-party right of appeal or equal right of appeal. Simply, we do not support its introduction, nor do we support any restrictions on the current right of appeal. The Government's views are well known and are supported by a range of stakeholders, many of whom have been mentioned, so I will not go through them all again. Many community groups want investment and improvement in their areas, but their ambitions could be hampered by additional appeals.

I would like to set the record straight and clarify that this issue was explored during the independent review of the planning system. There

was not a specific question on it, because the panel asked much broader questions about engagement. Those who support an equal right of appeal made their views known through both written and oral evidence to the panel.

Having taken into account the available evidence, the independent panel concluded at recommendation 46 of its report that it was not persuaded that third-party rights of appeal should be introduced. It stated:

"Effective planning depends on building positive and productive relationships."

Andy Wightman: Will the minister take an intervention?

Kevin Stewart: I will take a brief intervention—I have a lot to get through.

The Convener: All interventions must be brief.

Andy Wightman: Does the minister accept that the independent review did not look at the applicant right of appeal?

Kevin Stewart: No, I do not accept that—I have just said that there was not a specific question on it, because the panel asked much broader questions, but those questions were asked.

Recommendation 46 continued:

"The evidence shows that a third party right of appeal would add time, complexity and conflict to the process, and have the unintended consequence of centralising decisions, undermining confidence and deterring investment."

The panel concluded that it would be much more beneficial to use available

"time and resources to focus on improved early engagement".

I agree, and that is what we have sought to do in this bill. We will continue to look at ways in which that can be improved and I am more than happy to work with Mr Simpson and other members to get to that point.

I carefully considered what the committee said about appeals in its stage 1 report. I recognise that many communities feel frustrated by the planning system and I have acknowledged previously and again today that we can do more to build on the community involvement that we have seen to date.

Like the committee, I want people to be involved in planning. As well as having opportunities to say what they think, people need to know that they have been properly listened to. However, I am certain that introducing new rights of appeal or restricting the current right of appeal is not the answer. In fact, I am convinced that it would do the opposite. It would create conflict and undermine efforts to improve trust in the planning system; it would add uncertainty; it would undermine local democracy; it would be divisive; and there would be no impetus to engage in earlier participation.

The idea might seem to be politically appealing, but it would be disingenuous to suggest that introducing this right of appeal would mean that people would automatically get the decision that they were looking for. An additional right of appeal does not change the circumstances that led to a decision being made in the first place, and experience in Ireland shows that very few decisions are wholly reversed as a result of third-party appeals.

Some of the amendments in this group also seek to restrict the current right of appeal for applicants. I remind the committee why appeal rights exist—it was to ensure that there was appropriate scrutiny of the denial of the right of landowners to develop their land. That rationale remains as valid today as it did when planning regulation was introduced—perhaps even more so given the pressures that we are facing on housing supply and essential infrastructure. If people who want to provide new housing and facilities are to be refused, those decisions must be robust.

In practice, over the decades, the ability for an applicant to appeal has proved to be vital. Many of our much needed homes, places of work and facilities exist only because they have been approved on appeal. This is not about big business having some kind of perceived advantage on the playing field. It is about the delivery of real people's actual homes and jobs; it is about respecting and balancing public and private interests to deliver the development that we need.

If any of these amendments were supported, we would be asking applicants to take a leap of faith in the process. At worst, they would have no right of appeal; at best, a right of appeal might exist, to be concluded at some future date. There would be no certainty or clarity, and that uncertainty could make or break a decision to invest in Scotland. Restricting the current right of appeal could deter investment and put Scotland at a commercial disadvantage, with investors perceiving conditions in other parts of the UK to be more favourable. We cannot allow that to happen.

I oppose the amendments in the group on principle, but I will mention some details that are perhaps not as helpful as members intended them to be.

The amendments in the name of Andy Wightman and Monica Lennon would mean that the right of appeal for applicants and others would be dependent on a statement being made by the planning authority in accordance with the development plan. As I have made clear, that is only half of the story of how a decision would be

made, and it could come down to a matter of interpretation of complex information and careful professional judgment, which might not be universally accepted.

The approach that would be taken under the amendments would also miss the vital ability of our planning system to recognise changing circumstances. Occasionally, there could be very good reasons for making a decision that is not in accordance with a development plan. For example, an emerging draft development plan could contain far more current and relevant policy intent than the ageing plan that it would be about to replace, but it would not yet be the development plan. Alternatively, there could be a worthwhile development opportunity that could not possibly have been anticipated when the development plan was prepared. Those are examples of the planning system working properly and responsibly by allowing there to be exceptions.

Amendment 51, in the name of Alex Rowley, would go even further. It would place the decision on whether an appeal right exists in any given case firmly in the hands of the person who is seeking to appeal—the very person who has a vested interest in having a right of appeal.

Amendment 60, in the name of Andy Wightman, has a similar provision, under which it would be up to the appellant to decide whether the grounds for objection by a statutory consultee have been addressed, regardless of the view of the body that made the objection.

The only restriction on the right of appeal in those cases would be whether the appellant had made a submission on the application. It would just take a submission about a planning application for third parties to preserve their right of appeal. Rather than making the system more efficient, that would slow it down and discourage the genuine, meaningful early engagement that we need more of in planning. What is proposed would damage the planning system, creating more confusion, conflict and challenge and less certainty and transparency.

Amendment 92, in the name of Alex Rowley, shows a complete misunderstanding of the purpose and content of the development plan. The development plan guides development management decisions; it does not directly authorise or prohibit development. Not all land is allocated for one use or another. Large development sites—for example, large residential development sites that require master planning—may be allocated in the plan. Land that is required for schools or transport interventions may be identified, but the plan cannot anticipate every possible development, large or small. In reality, amendment 92 would take away the applicant's right of appeal, including for many developments that might be clearly supported by policies of the development plan and therefore in accordance with the plan.

I understand that Andy Wightman will not move amendment 325, but I will talk about it because it is important that we address some of the issues. Maybe the reasons for not moving it are the points that I will highlight. Amendment 325 would create new appeal rights where there had been maladministration or criminal activity by a member of the planning authority. With the exception of a recent reported case in which two councillors were charged, the issue has not been raised as a concern by stakeholders, and I am not convinced that such conduct is widespread.

10:30

There has been no consultation with planning authorities about the amendment, and real impracticalities are involved. As the right of appeal would not be linked to the decision on a particular application but would arise only at the point when the guilt of a member of the planning authority was established, it would have to run from that date and not from the date of the planning decision.

In effect, that would mean that it would not be possible to know, at the time a decision was made, whether a right of appeal might arise. By the time any investigations and prosecutions had been completed and someone had been found guilty of wrongdoing, it would be entirely possible—perhaps even likely—that the development would have been completed. In addition, there is no requirement that the maladministration or criminal activity in question need even relate to the particular application in question. Therefore, I am pleased that Mr Wightman will not move the amendment today. I am happy to have further discussions with him on the issue, but that amendment was not suitable.

Amendment 319, in the name of Alex Cole-Hamilton, takes a different approach from other proposals in the group. It would introduce a further restriction on the ability of ministers to deal with appeals. It creates a requirement to consider whether the decision of the planning authority is "manifestly unreasonable". Although proposed new section 48(1B) of the 1997 act makes it clear that a decision would be "manifestly unreasonable" if no reasonable person could have made the decision, that is without prejudice to ministers being entitled to consider that a decision is "manifestly unreasonable" in other circumstances. Ministers may reverse or vary the decisions of a planning authority where they consider that it is reasonable to do so.

Amendment 319 would serve to add another decision-making step and introduce the potential

for further grounds of legal challenge to the reasons given on appeal decisions. Any party can already challenge a decision in the courts on the ground that the decision maker has acted unreasonably, but that right is distinct and separate from the right of appeal.

The committee must not underestimate the importance of its decisions on this group of amendments. They could fundamentally change our planning system and shift the whole focus of this package of planning reforms from greater collaboration to more conflict, very much to the detriment of investment in Scotland.

An additional right of appeal may, on the face of it, appear to promise a lot to communities and individuals, but I am concerned that that claim is at best misguided and at worst misleading. An additional right of appeal will simply add time, cost, procedure and conflict to an already stretched planning service. Does the committee really think that the result will be so different? Is it fair to suggest to communities that they can expect to overturn decisions and put a block on development? The evidence shows that that will not be the case.

Our planning system is inclusive, and I want to improve on that to ensure that people can have a real influence on how their places and communities develop in future. I welcome the decisions that the committee has already made to support that approach. If we are serious about delivering investment in the developments that our communities need—which I most certainly am—we cannot afford to make that more difficult. We already have an appropriate balance in appeal rights. Some appeals are decided by or on behalf of ministers, others by local review bodies. The changes that are proposed in these amendments would take our planning system in entirely the wrong direction, and for all those reasons I urge the committee to reject them all.

Alex Rowley: Valid points have been made in the debate. However, I do not think that people who have experienced the planning system would always use the word “inclusive”. That comes up again and again.

I support the idea of front-loading engagement in the system. Moreover, over many years as a politician, I have actively encouraged people to get involved in the planning process at the earliest stages. I have repeatedly made the point in the media that if people wait until an application is in and the colour of the bricks is being discussed, they are too late. They have to get involved much earlier.

I am disappointed that Andy Wightman said that he cannot support amendment 51. When the Environment, Climate Change and Land Reform Committee considered the Scottish Crown Estate Bill at stage 2 a few weeks ago, we considered amendments that he had lodged, about which he said that a lot of work would need to be done before stage 3. The same applies to the amendments in this group.

I am encouraged by Graham Simpson’s comment that we will consider the issue again as we approach stage 3. I urge all the parties—with the exception of the party that is absolutely opposed to listening to the concerns that the public have raised—to get together before stage 3, because there is a real issue here.

Kevin Stewart: I am more than happy to engage with every member, whether I agree with their amendments or not. I have done so throughout the process and will continue to do so. I think that many members who are round the table will tell Alex Rowley about the efforts that I have made to ensure that we get to the best possible place. I do not think that a third-party equal right of appeal is the best place.

Alex Rowley: That is the whole point. You have ruled that out from day 1, and have made it clear that you are totally opposed in principle to looking at any aspect of such an approach.

Amendment 51, in my name, specifically relates to a front-loaded process. I have spoken to people who have taken part in such a process. They talk about meeting rooms that are packed out with members of the community, with the council then determining the local plan and saying, “Yes, that process worked,” only for a developer to come along before the ink is dry on the paper, fire in an application and then take it to appeal and overrule and undermine the whole process of front loading.

That is the problem that I am trying to address in amendment 51. I accept that in technical terms the amendments in the group need to be worked on and could be stronger, but the principle of the matter is that—as I have heard people say—democracy does not work in planning and people feel cheated and betrayed by the whole planning system. If people feel like that, we have a problem. However, the minister and the party of Government seem to be completely unwilling to take that on board. They are ignoring communities throughout Scotland who have faced the problem.

Kenneth Gibson said that we need to build houses. I agree. One of the biggest blocks to building houses in Scotland is the lack of up-front funding for infrastructure such as schools, healthcare, leisure and community facilities. That, and not the planning system as such, is a key block. The front-loading of infrastructure provision is something that I have raised with the minister time and again. That is the issue that needs to be

tackled, if we want to release a lot of land that is already in plans and needs to be built on—

The Convener: You can give your party-political speech on another day, Mr Rowley.

Alex Rowley: I will certainly press amendment 51. All the amendments in the group need work, and we must come together at stage 3. Only one party is—

Kevin Stewart: I have listened very carefully to Mr Rowley and we have had conversations about some of the issues that he has raised. We will continue to have discussions, and the Government has put in place the housing infrastructure fund, for example, to help.

Alex Rowley has been talking about wanting people to get involved early, which is what I want and what I think everybody wants. It is too late to get involved when the decision is being made, so that is a clear argument for why adding further late appeals is not the answer. I am willing to work with all parties on trying to improve the early engagement aspect as best we can. We can do a lot not only within the bill, but outwith it, to get more folk involved in the planning process. I have talked previously about intertwining community planning with spatial planning; I think that that is a way to get more people involved. That is the collaborative approach; adding more appeals at the end is a recipe for even more conflict.

The Convener: Okay. You have made that point three times, now.

Alex Rowley: The problem with that is that people can spend time, energy and, often, resource in getting involved at the early stages, but can be completely ignored if a developer does not like the outcome. The developer then has the right of appeal, but the people who put everything into the process have no rights. That is where the process breaks down.

The minister was quite critical of my amendment 92, but it came about as a result of discussions that I had on my amendment 51 with two of—I think—the most senior planners in Scotland. If I have got that completely wrong, I need to stop taking advice from very senior planners.

I do not intend to move amendment 92, but I certainly intend to press my amendment 51. I will finish by saying again that it seems that only one party in the Parliament is fundamentally opposed to addressing the concerns that people in communities across Scotland are raising, so the other parties need to come together and work together so that at stage 3 we can address the genuine concerns that are being raised in communities across Scotland. With that, I press amendment 51.

The Convener: The question is, that amendment 51 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)

Abstentions

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

The Convener: The result of the division is: For 2, Against 3, Abstentions 2.

Amendment 51 disagreed to.

Amendment 59 moved—[Andy Wightman].

The Convener: The question is, that amendment 59 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)

Abstentions

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

The Convener: The result of the division is: For 2, Against 3, Abstentions 2.

Amendment 59 disagreed to.

Amendment 60 moved—[Andy Wightman].

The Convener: The question is, that amendment 60 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)

Abstentions

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

The Convener: The result of the division is: For 2, Against 3, Abstentions 2.

Amendment 60 disagreed to.

Amendment 92 not moved.

Amendment 143 moved—[Monica Lennon].

The Convener: The question is, that amendment 143 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)

Abstentions

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

The Convener: The result of the division is: For 2, Against 3, Abstentions 2.

Amendment 143 disagreed to.

Amendment 325 not moved.

Amendment 319 moved—[Alex Cole-Hamilton].

The Convener: The question is, that amendment 319 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

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

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

Amendment 319 disagreed to.

10:45

Amendment 209 not moved.

The Convener: Amendment 88, in the name of Andy Wightman, is in a group on its own.

Andy Wightman: In determining planning applications, planning authorities are required to have regard to the provisions of the development plan so far as it is material to the application and to any other "material considerations". Together with applicant appeals, material considerations give the planning system so much discretion that the development plan can sometimes appear to be somewhat irrelevant.

In order to give greater clarity to the issues that will be taken into consideration in any determination, and to strengthen the plan-led system, it would be helpful to codify in regulations what is meant by "material considerations". At the moment, they are undefined in law.

Rather like the previous debate about introducing regulations to govern the circumstances in which ministers can use call-in powers, it will be up to ministers and Parliament to determine how widely or how narrowly, or how extensively or how minimally, to define "material considerations". That is a question for another day.

However, once agreed, only considerations that fall within the scope of those that are set out in such regulations would be "material" for the purposes of planning determinations under the 1997 act. I stress again that it would be up to ministers and Parliament to determine how widely to construe, and how widely or narrowly to frame, such material considerations.

Amendment 88 is a modest amendment that seeks to bring greater clarity and certainty to the planning system.

I move amendment 88.

Kevin Stewart: As I have already said, the inclusion of "material considerations" is an important and long-standing element in decisions on planning applications. There are references to material considerations in multiple provisions of the 1997 act, when considering appropriate periods for duration of planning permission, or revocation or discontinuance of permission, or for taking enforcement action. What might or might not constitute a material consideration can be different across those different purposes.

The 1997 act deliberately leaves the phrase "material considerations" undefined. It is just not possible to anticipate and to lay down in legislation everything that could be a material consideration in every case or circumstance, for all purposes. Any list or definition of material considerations is likely either to restrict what planning authorities could consider, or to require them to consider issues that might not be relevant to the case that is before them.

Leaving the phrase undefined will mean that it is for the decision maker, in the first instance, to decide what the material considerations are, in any given case. Ultimately, if there is a dispute about it, the courts will adjudicate and independently decide what amounts to a material consideration in a case.

Graham Simpson: Andy Wightman and I met planning conveners at the Convention of Scottish Local Authorities, and he raised the issue. I have to tell the minister that the planning conveners are comfortable with what amendment 88 proposes. Councils do not, therefore, seem to be against the idea.

Kevin Stewart: I and my officials met planning conveners yesterday and the topic was not raised. I am in regular contact with planning conveners and am more than happy to talk to them.

There have been accusations that the bill is centralising in various ways. I am clear that the power and responsibility that Mr Wightman wants to take from planning authorities and the courts to give to the Government is not wanted by this Government.

Andy Wightman: I clarify that I do not suggest that ministers should have the power. Parliament would pass the regulations, as it passes all legislation with regard to planning. The terms of such regulation can be drawn as widely or narrowly as ministers and Parliament see fit.

Kevin Stewart: Whatever way, it is centralisation. The key thing is that to try to predict everything that could be a "material consideration" for every case across all situations that could arise under the 1997 act and which use the expression would be an almost impossible task. That is why our published guidance in "Planning Circular 3/2013: Development management procedures" contains examples of possible material considerations with regard to planning applications, but they are merely broad categories. The circular makes it clear that the list is illustrative and not exhaustive.

It is also unclear what scope for "material considerations" should be set; it could discount considerations that really matter in decision making. If there are particular matters that Mr Wightman seeks to clarify through amendment 88, I will be happy to discuss with him and others before stage 3 what could be done through guidance. However, I cannot support amendment 88, so I urge Mr Wightman not to press it.

Andy Wightman: I have listened carefully to what the minister has said, and I accept that the term "material considerations" occurs in a variety of places in the 1997 act. Given that we are trying to move towards a more plan-led system, and towards greater certainty and greater confidence in that system, leaving undefined a term such as "material considerations" is not helpful. I accept that "material considerations" is a very useful and vital part of the planning system—I have no disagreement at all on that with the minister—but surely it is not unreasonable to seek to define "material considerations" via regulations that are introduced by ministers to Parliament. The definition could be drawn very broadly, and could be so broad as to be almost meaningless. That would probably not help—

Kevin Stewart: Exactly.

Andy Wightman: I am just illustrating the power that the regulation would give to ministers and Parliament to draw the definition as widely or narrowly as they see fit. The minister is arguing, in essence, that there should be infinite discretion: that "material considerations" could be anything. I do not accept that. "Material considerations" should fall into a prescribed range of circumstances and categories that are relatively broadly drawn and that are stated for clarity, so that the guidance that the minister has talked about would no longer take the form of guidance but of statutory regulation. It would be up to ministers not even to introduce such a regulation if they did not wish to; introducing such regulations would be in the gift of ministers.

Kevin Stewart: I do not really want the gift, convener.

Andy Wightman: That may not be so; it is described as

"the meaning prescribed by the Scottish Ministers,"

which would require Scottish ministers to come up with a meaning. That would require regulations, so I will row back a little bit on what I said.

I am trying to say that the meaning would be up to Scottish ministers to frame. If Parliament agrees with the minister that "material considerations" should continue to be framed very broadly, I am sure that Parliament will consent to that and we will have material considerations that remain broadly framed but which at least take the form of a statutory regulation that has been approved by Parliament. That is all that I have to say.

The Convener: Are you pressing or withdrawing amendment 88?

Andy Wightman: I press amendment 88.

The Convener: The question is, that amendment 88 be agreed to. Are we agreed?

Members: No

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 88 agreed to.

Section 17—Duration of planning permission

The Convener: Amendment 263, in the name of the minister, has already been debated with amendment 318.

Amendment 263 moved—[Kevin Stewart]—and agreed to.

Section 17, as amended, agreed to.

Section 18 agreed to.

10:55

Meeting suspended.

11:03

On resuming—

Section 19—Planning obligations: financial agreements

The Convener: Amendment 98, in the name of Andy Wightman, is grouped with amendments 166, 320 and 317.

Andy Wightman: The policy memorandum says nothing about sections 19 and 20. I was advised that that is because those sections introduce no new policy. The explanatory notes provide an explanation of what is intended, and it appears that section 19 makes changes to section 75 of the 1997 act to allow the requirement for payment to be made by an applicant without such a payment being part of an obligation that restricts or regulates the use of land.

I spoke to two eminent planning professionals—one in the public sector and one in the private sector—and asked them what they thought were the meaning, consequence, intent and purpose of section 19, and they gave completely different answers. Parliament needs to be clear about what it is legislating on. Ministers appear to think that section 19 makes very little change to the law, if any, while two professional planners think that it makes a change, but they do not agree on what that change is. I struggle to work out what the change is, which is why I asked about it in the first place.

Amendment 98 would leave out section 19, and I invite ministers to come back at stage 3 with a section that is clearer in its terms and intentions.

Amendment 166, in the name of John Finnie, seeks to bring greater transparency to section 75 agreements and is motivated in part by the secrecy surrounding the section 75 agreement that was entered into between Highland Council and Tesco on the Inverness west link. Amendment 166 would require planning authorities to publish and promote the relevant section 75 instrument so that people are aware of what it involves. It is important to draw the committee's attention to the fact that the obligation for the duty contained in the amendment is for planning authorities

"to publish and promote a relevant instrument in such a manner as they consider sufficient to ensure that it is brought to the attention of residents of the area".

That leaves a substantial amount of discretion to the planning authority on how that should be done.

Finally, amendment 320, in the name of Alex Cole-Hamilton, appears to be helpful in bringing greater accountability to the way in which planning authorities use section 75 agreements.

I move amendment 98.

Alex Cole-Hamilton: Amendment 320 is a light-touch amendment, which goes some way towards solving a problem and restoring confidence in communities where development happens. We can all think of examples in our constituencies where communities have been let down by developers who have made promises at the planning stage that they did not deliver on.

In my constituency, AMA developed the Brighouse Park development on the Cramond campus, with section 75 commitments to deliver sports pitches and a pavilion. At the end of the development, AMA claimed a cash flow problem, seeded the still slightly contaminated ground with meadow flowers and left it at that. Many people had bought properties with the expectation that there would be sports facilities nearby and were sadly let down. There is no comeback on that, it seems.

Amendment 320 would require planning authorities only to submit an annual report, detailing commitments undertaken by developers and those not yet complied with as part of their obligations to planning gain. That would afford a greater level of transparency and create an in-built organisational memory within planning authorities, which would continue, despite the churn of elected members who sit on committees. Members' successors would be aware of those developers who have a habit of making commitments and not delivering.

I hope that the approach in amendment 320 will incentivise developers to make good on their commitments by giving them the idea that they will be under the full glare of public scrutiny if they continually make commitments to planning gain and do not deliver. As I said, it will give planning authorities a healthy scepticism if there are developers that consistently fail to meet their commitments, and allow them to take such promises with a pinch of salt.

The other part of amendment 320 is an obligation on developers to tell residents in the vicinity of a development what they have committed to undertake. That will do two things. First, it will help local authorities to put pressure on developers to make good on those commitments and secondly, in some cases, it will soften the blow of the development on communities—it will win hearts and minds—because there will be a clear understanding, at letter-box level, of what developers have committed to and what benefit the community can expect to derive from the proposed development.

Amendment 320 would not introduce something that is overly bureaucratic. It would sit in the public domain and provide transparency and a clear level of scrutiny. I hope that it would go some way towards preventing developers from thinking that they can make promises and walk away once they have derived the capital that they sought.

Graham Simpson: By revising section 20, on the modifying and discharging of planning obligations, amendment 317 would allow applicants and authorities to agree changes to planning obligations in a much more efficient manner. The outcome would be that a planning authority and an applicant who are in agreement on a proposed change to a planning obligation would not have to go through the statutory section 75A application process to give effect to that change. Instead, they could agree between themselves to modify the agreement. That would bring the law in line with the law in England and Wales—not that that matters; I just thought that I would mention it.

At present, section 75A applications for major developments can take up a disproportionate amount of time. For example, a pair or consortium of home builders working together on a development of several hundred new homes may wish to make layout changes that would increase the total number of new builds. Indeed, that is quite common. The wording of section 75A is generally interpreted by planning authorities as meaning that a formal application must be made in order to update a planning obligation. That means that a section 75 application for a simple and agreed change where the only interested and notifiable parties are the planning authority and the applicant clogs up the development management system. Sometimes, that can take several years to resolve. That does not make a lot of sense. Amendment 317 attempts to make the provision slicker and more streamlined, which is something that the minister has spoken a lot about.

I support John Finnie's amendment 166 and Alex Cole-Hamilton's amendment 320. John Finnie's amendment is about informing residents about planning obligations, which is positive. Mr Cole-Hamilton's amendment would require planning authorities to publish annual reports on obligations. That is about transparency. When he was speaking, I was thinking back to my time as a South Lanarkshire councillor. It is certainly not common practice for councillors to be told about obligations, so they do not even know what is going on on their own doorstep. The amendment makes a lot of sense.

Mr Wightman's amendment 98 would remove section 19, which relates to the financial agreements of planning obligations. We had a good look at that issue. To be frank, we are in the same place as Mr Wightman—we have no idea what the provision means. It would be welcome if the Government were to clear up the confusion for stage 3, but at this point we will back Mr Wightman.

Kevin Stewart: Planning obligations are an important tool for planning authorities, developers and the public. They are used to ensure that the impacts of development are properly addressed, which ensures that the developer pays for the infrastructure required to make its development acceptable. We know that communities want that to happen, and it is in all our interests that planning obligations operate effectively.

We want the use of planning obligations to be consistent and transparent, to avoid confusion in the system. Currently, section 75 of the Town and Country Planning (Scotland) Act 1997 requires that a planning obligation restricts or regulates the development or use of the land to which it relates; under section 75(3)(b), the planning obligation can include a requirement for the payment of money. Section 19 of the bill ensures that there is no doubt that a planning obligation can require a financial payment without having to be worded so that it otherwise restricts the development or use of the land.

I heard what Mr Wightman said about the comments of others. I am quite happy for him and others to speak to me and officials on the issue, to give you the clarity that you require; I am more than happy to go through all that with members. However, section 19 does not seek to widen the scope of when planning obligations can properly be sought by a planning authority. Obligations would still have to have a sufficient relationship with the development in question.

The changes made by section 19 do not alter the general principle that a planning obligation requiring a sum or sums of money to be paid to the planning authority should be for a planning purpose or objective that should in some way be connected with or relate to the land in question. Amendment 98 in the name of Andy Wightman would remove the clarifications that are made by section 19. I therefore ask the committee not to

support it, but to note that I am willing to speak to folk further.

11:15

Amendment 166 from John Finnie and amendment 320 from Alex Cole-Hamilton both seek to improve the transparency of planning obligations. I see the merit in those with an interest being able to be better informed of the context around planning decisions. A summary of the terms of planning obligations already has to be contained in handling reports, which are kept in the planning register along with a decision notice for the application. Those documents are already open to public inspection but there is scope to enhance that.

I would be happy to support the publication of the full planning obligation document; however, I am concerned that amendment 166 would impose an additional burden on planning authorities by requiring them to promote those documents. It is not clear exactly what that would require. The development management regulations already include requirements for the publication and notification of various pieces of information. We can find better ways of making sure that planning information is readily available to the public through the regulations and the improved online systems that the Scottish Government is developing. I ask the committee not to support amendment 166 and to allow us to consider what should be required in more detail in secondary legislation.

Given that planning authorities hold all the other information about planning applications, it is more appropriate for them to publish details of planning obligations rather than the applicant, as is proposed by Mr Cole-Hamilton. It will be easier for the public to find information if it is all in one place. I see potential benefits from amendment 320 and its aim of collating information and statistics on planning obligations. However, I again have concerns about the burden that that would place on planning authorities.

Section 26 will require planning authorities to prepare annual performance reports, the form and content of which are to be set by regulations. That seems to me an appropriate place to include planning obligation statistics rather than in a stand-alone report. I encourage the committee not to support amendment 320, but I am more than willing to have further discussions about how we can best ensure that the information is available.

Finally, in relation to Mr Simpson's amendment 317, it is important that the process around how planning obligations can be modified or discharged is clear. Section 20 would do that. I appreciate that it is a touch obscure but, first, it clarifies that a formal application has to be submitted in accordance with section 75A in order to modify or discharge a planning obligation. Secondly, it introduces additional flexibility for the decision maker that is not available at present. The flexibility allows for the applicant and the authority to agree to an alternative modification to the one specified in the application.

Amendment 317 would create a dual process whereby there would be a statutory application process for modifying an obligation in accordance with section 75A as well as an informal process to modify it by agreement, without reference to any statutory procedures. That is not desirable. That informal process would also bypass other important provisions in section 75A, including the requirement to set out when the modified obligation would apply and protections for other people against whom the planning obligation may be enforceable who are not involved in the application for modification or discharge. I therefore do not support amendment 317 and, to avoid those issues, I ask the committee not to support it.

Andy Wightman: From what the minister says, section 19 seems to involve a policy change and a change in the law rather than just a clarification. The minister said that he is happy to discuss the issue. There are lots of things to be discussed between now and stage 3.

Kevin Stewart: It is a fair whack, shall we say.

Andy Wightman: I am genuinely concerned that, as I said, two senior and experienced planning professionals read the section and took different meanings from it. That may be because they did not read it very carefully or did not spend a lot of time thinking about it—I would not seek to presume anything—but I am concerned that a provision can be interpreted in different ways by different people. The Government's view is that the section does not make a change in policy.

I am thinking on my feet as to whether to press amendment 98, because I genuinely do not want to create any extra work for anyone. I am prepared to concede to the minister, but there is a serious point about understanding. If section 19 involves a policy change and allows planning authorities to do things that they cannot do now, that should be made clear. If it merely provides greater clarity on what they can do now but it appears that they cannot do, that is a different matter. I am prepared not to press amendment 98. Homes for Scotland does not like the section, as it interprets it in a certain way, and I have a lot of sympathy with that. The other planning professional to whom I spoke thought that it changes policy and that no argument was made for that.

Kevin Stewart: There is no real change in scope. I understand that Mr Wightman has had conflicting views from folk. I am being passed a flurry of paper from my officials, and such paper often has bits and pieces of legalese in it, so it would be much better if we sat down and discussed exactly what the implications are. I urge Mr Wightman not to press amendment 98. He knows that I am a man of my word in this regard and that we will have those discussions and give him the full explanations that he requires, which may help him to make decisions about the future and may also help to give clarity to the folk who have been talking to him.

Andy Wightman: That is helpful.

To conclude my winding up, my interest in the issue will be to satisfy myself that, if policy changes are involved in section 19, I can support those policy changes. I will seek that clarity between now and stage 3. If the section involves policy changes that may affect the interests of applicants or developers engaging in the planning system, I may well seek to remove section 19 at stage 3. I hope that the discussions can bring clarity on which direction we will take, so that we do not end up with the issues hanging until the last minute. I take the minister's word, so I will not press amendment 98.

Amendment 98, by agreement, withdrawn.

Section 19 agreed to.

After section 19

Amendment 166 moved—[Andy Wightman].

The Convener: The question is, that amendment 166 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 166 agreed to.

Amendment 320 moved—[Alex Cole-Hamilton].

The Convener: The question is, that amendment 320 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 320 agreed to.

Section 20—Planning obligations: modification or discharge

Amendment 317 moved—[Graham Simpson].

The Convener: The question is, that amendment 317 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 317 agreed to.

Section 20, as amended, agreed to.

After section 20

Amendment 145 moved—[Claudia Beamish].

The Convener: The question is, that amendment 145 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 145 disagreed to.

Amendment 146 moved—[Claudia Beamish].

The Convener: The question is, that amendment 146 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 146 agreed to.

The Convener: Amendment 314, in the name of Ruth Maguire, is grouped with amendments 333 and 315. I welcome Ruth Maguire.

Ruth Maguire (Cunninghame South) (SNP): Good morning. I will speak only to amendments 314 and 315, which I lodged.

The amendments address an issue that has been raised with me by North Ayrshire Council councillor Davina McTiernan, a community group, individuals and the council itself, which has been making representations on the matter for years.

The Town and Country Planning (County of Ayr No 1 Special Development) Order 1953 was made on 28 July 1953 and came into operation in August that year. Subject to certain specific exceptions, the order permits the carrying out of any development at Ardeer, Stevenston without the requirement to obtain planning permission from the local planning authority.

When the order was made, Ardeer was a major industrial complex, operated by a single user, ICI. The area covered by the order is now in different ownership and there is no longer a large industrial factory at Ardeer.

The absence of any planning application process means that there is no process to evaluate material considerations such as traffic, parking, design, noise and environmental impact.

In particular, members should note that the Ardeer site is adjacent to the Garnock and Irvine estuaries and is an extensive and important regional habitat. Because of the existence of the special development order, there is no means of protecting that habitat or ensuring that the impacts of development are considered. For example, the special development order grants planning permission without the need for an environmental impact assessment. There is no mechanism whereby such an assessment can be required for development at Ardeer, as there is no need for planning permission in the special development area.

The order's existence also acts as an impediment to development. Inward investors are likely to be deterred from investing in tourism, housing or other clean uses of the area if a development of any sort could appear on their boundary without a proper planning process. Funders will want a proper process for any development, rather than one that could be challenged on the basis that it fails to have regard to environmental, traffic and other impacts.

Given that the Ardeer peninsula forms the north side of Irvine harbour, it could be argued that the special development order is a restraint on development of the harbour and Irvine harbourside. As members of all parties in the local authority and our two Parliaments continue to push the UK and Scottish Governments for the Ayrshire growth deal and proposals for Irvine harbour and harbourside and the Ardeer peninsula, the need for a solution to the problem is pressing.

Members have the amendments in front of them, so I will not read them out. Let me summarise their purpose and effect. Section 30(2) of the 1997 act enables planning permission to be granted by a development order in relation to land that is specified in the order. The power is rarely, if ever, used, but various old special development orders still exist.

11:30

Section 77 of the 1997 act currently sets out provisions for the payment of compensation if planning permission granted by a development order is withdrawn or modified, including circumstances in which a development order is revoked. If a development order is revoked, and an application is made within 12 months for planning permission for development previously permitted by the special development order, compensation is payable by the planning authority if that permission is refused or is granted subject to different conditions from those included in the SDO. That mirrors the provision under which the planning authority is liable to pay compensation where planning permission that was not granted by a development order is revoked or modified.

Compensation is limited to circumstances in which a claim made within a prescribed timeframe shows that a person interested in the land has incurred abortive expenditure or has otherwise sustained loss or damage directly attributable to revocation or modification. However, because of the broad nature of the permission usually granted

by a development order, the possible compensation for loss or damage is likely to be higher in such cases.

Amendment 314 would repeal section 77 of the 1997 act and introduce a power for Scottish ministers to make regulations concerning the compensation that may be payable on revocation of an order. Its effect would be to enable Scottish ministers to use regulations to set out the circumstances in which compensation may be payable, what the compensation would cover and the manner in which the level of compensation would be calculated; to require a claim for such compensation to be made within a certain period; to specify how such a claim should be made and the information that should be included; and to apply or disapply any of the provisions of part IV of the 1997 act, with or without modifications.

Amendment 315 would repeal various references to section 77 elsewhere in the 1997 act.

I move amendment 314.

Monica Lennon: As with Ruth Maguire's amendments, there is a story behind my amendment 333. It is rooted in a very local example, so members should bear with me, although I will not give all the details.

Planning consent is rarely, if ever, withdrawn or revoked. When I was a local councillor in Hamilton, there was a particular planning appeal that was upheld; in effect, the Scottish Government granted permission for an incinerator, and everyone, across the parties, was upset with the decision. Further discussions were had with the then cabinet secretary, as the decision was not made by him but delegated to a reporter.

During those discussions, the option of revoking consent came up. One of our colleagues, Richard Lyle MSP—who, at the time, was a Central Scotland MSP and is now the member for Uddingston and Bellshill—raised the issue, as did many others, including me, and he wrote to the local authority, South Lanarkshire Council, to ask it to use the revocation powers under the Town and Country Planning (Scotland) Act 1997. The Scottish Government was sympathetic to the use of the power, but the sticking point was that, even if Scottish ministers had used the revocation powers that were available to them, any liability for compensation would have fallen to the planning authority. There could have been a financial penalty, if you like, for the planning authority, as a result of a decision taken by Scottish ministers.

This is a very niche issue, but I feel that it is as important as the one raised by Ruth Maguire. I had a chat with the minister yesterday; I know that he has some concerns about the amendment and, although I have taken a steer from the Parliament's legislation team, I concede that it is not drafted as perfectly as it might be. Nevertheless, the intention behind it is to ensure that where ministers, for good reason, want to revoke a planning consent, any liability for compensation that results should not be transferred to a planning authority.

I admit that when I first read Ruth Maguire's amendments, I was not quite sure about them, but now that I am aware of the back story, I am happy to support them. I look forward to hearing what the minister has to say about amendment 333 in my name.

Kevin Stewart: The introduction of the planning system denied landowners the right to develop their land, unless permitted to do so. As a result, once a site has planning permission, a landowner or developer should be able to commit to making that investment, confident that the principle of development has been accepted. Occasionally, however, there can be circumstances in which it might be appropriate to revoke or modify a planning permission and thereby remove the right to develop. The 1997 act specifically allows for that where, for example, an administrative error has led to permission being granted mistakenly or where a significant change has taken place that means that the proposed development is no longer acceptable. However, in those very rare circumstances, property owners are entitled to expect to be fairly compensated for loss of given rights to develop their property.

The provisions for compensation are a long-established part of the planning regime and have been included in the system to ensure fairness if it becomes necessary to revoke or modify planning permission that has already been granted. Crucially, blanket removal of those provisions could put the planning system—and the bill—in conflict with the European convention on human rights. Moreover, it would carry the risk of making the system far more uncertain. For example, following a change of administration, might the new elected members be tempted—or pressured—to revoke a consent that had been granted controversially under the previous administration? That would pose a fundamental problem for planning: it would erode and undermine the value of planning permission and thereby significantly undermine investor confidence. I also point out that there has been no consultation on what is a very serious proposed change.

For all those reasons, I cannot support amendment 333 in the name of Monica Lennon, and I ask her not to move it.

Monica Lennon: Will the minister take an intervention?

Kevin Stewart: A very brief one.

Monica Lennon: What you say will inform my decision on whether to move amendment 333. I take your point that removing the whole of part IV of the 1997 act is quite a drastic move, but my question is: if ministers wish, for their own reasons, to revoke or modify a consent under, I think, section 68 of the 1997 act, is it fair for compensation liabilities to fall on the planning authority? That is the issue that I am trying to address.

Kevin Stewart: We have not had this discussion, but the question that arises from the point that you have raised is: who pays the compensation? Does that responsibility lie with the Government or with the planning authority? Once again, Monica Lennon is trying to do one thing with her amendment, but because of the way in which it is drafted, it will have immense unintended consequences. We have not consulted on the matter. As Ms Lennon has pointed out, we had some discussion about these matters yesterday, and I have offered her the opportunity to discuss them further with me or with officials, but I must tell her that amendment 333 will have immense unintended consequences. It does not just do what Ms Lennon is seeking to do.

Monica Lennon: In that case, I am minded not to move amendment 333. However, I come back to my very specific question: are you willing to engage with me to ensure that, if ministers revoke or modify a consent, it is not the planning authority that pays the price?

Kevin Stewart: I am willing to have that discussion, but I am not, at this moment, willing to say that I will move one way or t'other on the issue. A lot of work has to be done on it. I wish that we had discussed it earlier; we have an opportunity to do so now, but I guarantee nothing.

I support the aims behind Ruth Maguire's amendments 314 and 315 and the reasonable approach that has been taken in them. There will sometimes be circumstances in which it is appropriate for Scottish ministers to modify or even revoke the permitted development rights that are available under a development order, whether a general or a special development order.

In those cases, there may well be circumstances in which it may not be appropriate to pay the amount of compensation that might have been envisaged when the order was made. There is clearly a difference between planning permissions expressly granted by a planning authority following detailed considerations of the merits of a particular application, on the one hand, and a general permitted development right that applies to certain development across the country, or in a specific part of it, as described in a development order.

Some development orders were made many years—or, as in this case, even decades—ago, and the land use policy framework may have changed significantly. I agree that we should take the opportunity through this bill to ensure that, when a planning authority revokes or modifies a development order, any compensation for which the authority becomes liable is appropriate and proportionate. A very careful and considered approach will be required to ensure that that is done fairly. Should the committee agree to Ms Maguire's amendments, the Scottish Government will, of course, engage fully with planning authorities and others who may be affected before making any regulations under this power and will give full consideration to the ECHR in respect of compensation for the loss of property rights.

I ask the committee to agree to amendments 314 and 315, in the name of Ruth Maguire, and I ask Ms Lennon not to move amendment 333.

The Convener: I ask Ruth Maguire to press or seek to withdraw.

Ruth Maguire: I will simply press my amendments.

Amendment 314 agreed to.

Section 21—Fees for planning applications etc

Amendment 332 moved—[Andy Wightman].

The Convener: The question is, that amendment 332 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 332 agreed to.

Amendment 147 moved—[Claudia Beamish].

The Convener: The question is, that amendment 147 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)

Against

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

Abstentions

Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 1, Against 5, Abstentions 1.

Amendment 147 disagreed to.

The Convener: Amendment 326, in the name of Andy Wightman, is grouped with amendments 327, 328, 310 to 312, 23, 313, 24, 268, 17, 18 and 276.

Andy Wightman: We are now on to a new section on the training and performance of planning authorities. My amendments fall into three distinct groups: amendments 326, 327 and 328 are one group; amendment 310 stands on its own; and amendments 311, 312 and 313 are the third group.

The Planning (Scotland) Bill and the wider review of which it is part place a number of new duties on planning authorities, which will have resource implications at a time when resources in the planning service are scarce and are continuing to fall, as the committee has heard several times already.

In spite of that, we have seen consistent improvements in the speed of planning decision making. There is also increasing understanding across the board that we need to focus more on measuring the quality of decision making in planning, which is not just about making decisions quickly but about making the right decisions that ultimately contribute to making better places.

The penalty clause provisions in the Town and Country Planning (Scotland) Act 1997 were introduced through section 55 of the Regulatory Reform (Scotland) Act 2014. The provisions allow the Scottish ministers to vary planning fees when a planning authority is deemed to be performing unsatisfactorily, and they have never been used. It seems counterproductive to threaten to withdraw funding from planning authorities that need to improve.

The improvements in planning that the bill seeks to drive will require skills and resource support to be provided to the planning authorities that are responsible for implementing them. Amendments 326, 327 and 328 would make a clear statement of intent to that end. The penalty provisions have never had support in the planning community, and I am pleased to put forward my amendments for consideration.

11:45

Amendment 310 provides for flexibility and a transition period in relation to the bill's duties with regard to mandatory planning. It seeks to enable members of planning committees to continue to take part in decisions provided that they have begun the proposed statutory training. In providing for a transition period, it would soften the bill's rather hard provisions on the undertaking of statutory training by members of planning committees.

Amendments 311, 312 and 313 seek to ensure that any mandatory training that is required of members of planning authorities is required of all decision makers, including the Scottish ministers. In its stage 1 report, the committee recommended that the mandatory training provisions be removed from the bill, but it also said that, if they were to be retained, ministers should be subject to them, too.

In its response to the committee's report, the Government outlined why that was not possible—it said that it was because of the collective nature of the Scottish ministers, in whose name determinations are made. Amendment 311 seeks to make a fundamental change whereby the Scottish ministers, as decision makers in the planning system, would be subject to mandatory training in the same way as all others who are involved in the process are. In my view, amendment 312 would overcome the objection of the Scottish ministers, which was raised by Kevin Stewart in his response, by providing that regulations could be laid that would name those individuals who were required to undergo the mandatory training.

Amendment 313 is consequential. It makes it clear that the scope of section 25(1), whereby functions can be transferred to another planning authority or to the Scottish ministers, extends only to a local authority—it should say "planning authority"—or national park and cannot extend to the Scottish ministers, because, if amendment 311 is agreed to, the provision would allow ministers to direct that their functions be exercised by someone else. The sequence is rather complicated. The amendment will become redundant if amendments 23 and 24 are agreed to. To be clear, as a matter of policy, I support mandatory training for planning decision makers, but it must apply to all.

If amendments 311, 312 and 313 are disagreed to, I will support Graham Simpson's amendments 23 and 24. I support Graham Simpson's amendment 17, which seeks to delete section 26, the provisions of which cut across the

collaborative work that has been undertaken to date to continuously improve the outcomes of the planning system.

I support amendment 268, but I oppose amendment 18, which would introduce extra bureaucracy and administration in relation to provisions that already exist in the bill and in previous legislation.

I move amendment 326.

Graham Simpson: I will discuss amendments 23, 24 and 17 before moving on to amendment 18.

Amendments 23 and 24 seek to remove the requirement for councillors to undergo mandatory training by removing sections 24 and 25. Amendment 17 seeks to remove section 26, which sets out how the Scottish ministers can assess the performance of planning authorities and includes powers to take on an appointed person or planning tsar.

On performance, the bill does three things. There will be a statutory requirement for every planning authority to produce an annual performance report, with the form, content and production process being set out by ministers in regulations.

Ministers will have the power to appoint a national planning performance tsar to report back to them on performance standards. They will also have the power to appoint a person to conduct an assessment of the performance of one or more planning authorities, to report on their findings with recommendations and to grant powers to pursue the recommended improvements.

What constitutes poor performance is not defined in the bill, which leaves the way open for the whole process to become very political. If a council took a series of planning decisions that conflicted with the agenda of a Scottish Government of any colour, now or in the future, it could be determined to be "underperforming", and that would be a dangerous precedent to set.

The committee produced a hard-hitting and well-received stage 1 report on the bill, which was agreed to unanimously. It said of section 26:

"We note that planning authorities have for a number of years voluntarily reported on their planning performance. We received no evidence that this approach has been flawed.

Indeed as COSLA explained in its written evidence 'The decision by Scottish Government to legislate on reporting came as a surprise' and that it was 'not expecting' the inclusion of the national planning performance co-ordinator in the Bill as discussions with the Scottish Government were ongoing. COSLA comment that 'It is the proposals on assessment which give us most concern. As far as we are aware, the appointment of an assessor for local government performance has never recently been discussed.'

The Committee sees no need or justification for the Bill's proposals on performance and recommends that section 26 of the Bill be removed. We consider that the Scottish Government should continue to work collaboratively with COSLA."

Amendment 17 would simply do what the committee said should happen. I have had extensive talks with COSLA on this matter and on other aspects of the bill, and it agrees with the committee on it.

Amendment 23 would remove section 24, and amendment 24 would remove section 25. Section 24 proposes that future regulations will set out the training requirements for members of planning authorities who sit on planning committees or on local review bodies. In fact, all councillors—every single one of them—could have to take decisions on planning matters, so the provision applies to them all. It requires that training be completed before such members make planning decisions. Section 25 sets out the arrangements to ensure continuity of the planning service should sufficient members not have completed the training, such as by handing powers to other councils.

The policy memorandum explains that regulations will specify a requirement

"for attendance and/or completion of an examination by members of planning authorities before they may be involved in the making of planning decisions by their authority."

My view on that, which is shaped by my 10 years' experience as a councillor who sat on the planning committee, is that councillors are elected to take decisions affecting their areas and it is simply an affront to democracy for someone to then set them a test to rule on whether they are bright enough to do so. In any case, the minister himself has refused to take an exam, despite being the ultimate arbiter on planning matters.

What does the committee have to say on all of that? Our report reads thus:

"We agree that in undertaking their functions on a Planning Committee it is important that Councillors are clear about the matters upon which they should base their decisions. We consider therefore that Councillors should attend training on key aspects of the planning system. We do not agree, however, that it should be mandatory and accordingly we recommend that the Scottish Government amends the Bill to remove this provision. We consider any training in planning should be considered as part of a continuous professional development programme for Councillors. We invite COSLA and the Improvement Service to consider broadening the range of training available to Councillors on planning to include

- best practice in community engagement in planning
- equalities and human rights duties
- challenges in urban and rural settings
- environmental and sustainability duties

If the amendments we recommend are not made then we consider that all decision-takers in planning should be subject to the same training requirements. This includes all relevant Councillors and Scottish Ministers."

In his response to the committee of 24 May, the minister said:

"The Scottish Government is clear that Planning Ministers receive appropriate training on their role and functions when they are appointed".

The response declared that imposing a training requirement would

"raise the risk that the Scottish Ministers' planning functions ... could not be carried out",

which is precisely what the bill proposes for councillors—talk about hypocrisy. Councils train their members in all sorts of things, including planning; they do not need to be ordered to do so in law. I am not just saying that; having been a councillor, I know that. However, I thought that I would check in any case. I wrote to every council in Scotland to see whether they train their councillors in planning, and 28 of the 32 wrote back, all of which train their councillors. Most also provide regular refresher training. This part of the bill is simply unnecessary because what it proposes is happening anyway.

Amendment 18 tackles performance in a rather softer manner than the bill currently does by calling for an annual report from councils that details the number of planning applications that have been dealt with, the outcomes and the time taken to process the applications. Amendment 18 creates transparency around performance without undermining the council's authority.

Andy Wightman's amendment 310 sets out guidelines on when training should be complete, but, since I want the requirement for training to be removed, I will not support amendment 310. Amendment 311 tackles the ministerial training issue, and I will not back that amendment for the same reason. Amendment 312 simply adds a bit of detail to amendment 311.

Amendment 268, in the minister's name, is an amendment to section 26, which I want to see removed.

I will support Mr Wightman's amendments 326, 327 and 328 because they are beneficial and will improve the planning process.

Kevin Stewart: Before I launch into all the technical aspect of the amendments, I should say that in the stakeholder engagement and consultation, there was overwhelming support for the training of elected members. There was also support from stakeholders across the board for what we are trying to do here around performance. When I talk about stakeholders, I am talking about communities and individuals.

In my 13 years of experience as a councillor, one of the things that frustrated me greatly was going to extremely important meetings to decide on issues such as the passing of the local development plan and seeing folk sitting with papers in front of them that were largely unopened. More of them would have been opened if the right training had been given.

Graham Simpson: Will the minister take an intervention?

Kevin Stewart: I will take an intervention from Mr Simpson.

The Convener: Can you keep it brief, please?

Graham Simpson: It will be brief. Whether councillors open their papers is not affected by training. They could be trained and not have their papers open; that is an irrelevant point.

Kevin Stewart: It is a very relevant point. In my early years as a councillor, before the days of local development plans, when we were dealing with the local plan, I spoke to a number of members who quite clearly did not understand what was put in front of them. Training would have helped. This is extremely important, especially to stakeholders.

Performance is important to everyone who has a stake in the planning system. I am not talking about the big developers demanding faster processing. Householders, small businesses and communities all want an efficient service. Communities want to be assured that the planning authority is engaging effectively and is creating good outcomes in their areas. A lot of the correspondence from communities that crosses my desk is about performance in particular areas. Everyone wants to know that an authority is making good decisions that are based on a sound understanding of planning principles. As I said, our performance proposals were some of the most popular measures in our consultation, so the committee will not be surprised to hear that I absolutely oppose Mr Simpson's amendments to remove those provisions.

12:00

In its stage 1 report, the committee recommended that the Scottish Government should continue to work collaboratively with its partners and enhance the planning performance framework. I am committed to doing that. We will continue to work with the high-level group on performance, COSLA and other stakeholders to agree how best to measure performance and identify areas for improvement. We will work with them to develop the role of the planning performance co-ordinator, which is intended to support planning authorities and help to share good practice, and we will work with our partners

to draw up the criteria and process for initiating an assessment of performance.

Those approaches need statutory backing and, ultimately, a sanction is needed to deal with authorities that fail to improve, despite all the support. The package of measures that section 26 introduces will provide the positive and supportive framework that the independent panel envisaged.

Mr Simpson's proposed annual report would not be a helpful alternative in any way. There is general agreement that we need to consider performance in a more rounded way, even if we disagree on how that should be achieved. Requiring a report that reduces planning performance to the most basic numbers would not support that aim and would send entirely the wrong message about what we value.

My proposals take on board specific concerns that were raised about the provisions. Amendment 268 removes the provision that a person could be subject to criminal proceedings if they did not provide information that was requested in connection with a performance assessment. Although that is a standard provision—for example, it is used in relation to school inspections—I am satisfied that it is not necessary here. If an appointed person is not provided with information that they need to carry out the assessment, the report is likely to mention that, which is sufficient encouragement.

I have accepted the Delegated Powers and Law Reform Committee's recommendation that the power to prescribe the co-ordinator's functions should be subject to affirmative procedure. We will come to that in a later group that includes a composite amendment that covers a number of regulation-making powers.

I turn to Mr Wightman's amendments on fees. The Scottish Government has made it clear for many years that any increase in fees must be linked with improved performance. That is particularly important when planning authorities, COSLA and the RTPI have been asking us to raise planning fees to enable full cost recovery.

People are concerned that increased fees do not necessarily fund the planning service. I cannot commit to increasing planning fees to move towards full cost recovery without having sufficient mechanisms in place to ensure that those fees are reinvested in the service and lead to performance improvements. It is for local authorities to decide how their income should be spent, but robust performance monitoring should ensure that appropriate investment is made to meet agreed performance indicators.

Mr Wightman's amendments would remove ministers' ability to reflect individual authorities' performance in the fees that they can charge. Using the penalty clause would always be a last resort, but removing it would leave the Scottish ministers with few concrete options to use when planning authorities did not make expected improvements.

Not only were the proposals on training elected members overwhelmingly supported in our consultation, but people expressed surprise that such training was not already mandatory. Ensuring that decisions are made in a consistent manner and based in solid planning knowledge is an essential part of good performance, and essential to maintaining trust in the system. I urge members not to discard something that people all across the system want to see.

I listened to the arguments and I was prepared to lodge an amendment that would remove the power to transfer planning functions to another authority or to ministers if insufficient members have been trained. I have concluded that transferring decisions to another authority would not lead to faster decisions and that the reputational risk to an authority, should members not be able to take decisions, should ensure that the issue is resolved swiftly. Mr Simpson beat me to lodging that amendment, with his amendment 24. However, I lodged the consequential amendment that he missed, which will amend section 32.

The committee also suggested that if compulsory training was to be retained, ministers should be included. Let me put on record again that I am committed to undertaking training. I have received training on planning in my roles as both councillor and minister. It feels at the moment as though every day is a training session in planning for me. However, as I noted in my response to the committee's stage 1 report, requiring that in statute raises all sorts of difficulties.

Section 52(3) of the Scotland Act 1998 provides that the

"Statutory functions of the Scottish Ministers shall be exercisable by any member of the Scottish Government."

That is different from the way that planning authorities are constituted. If one or more members of a planning authority have not completed the training, the authority could substitute members on the planning committee or perhaps even change its quorum.

As I have said, the 1998 act provides that the

"Statutory functions of the Scottish Ministers shall be exercisable by any member of the Scottish Government."

Amendment 311 seeks to alter that position and the effect of the 1998 act. In addition, if the Scottish ministers were to be prohibited from exercising their functions, no junior minister or officials acting on their behalf could do so.

I recognise that Mr Wightman has attempted to unpick that in amendment 312, by providing for an individual Scottish minister to be designated as responsible for planning and placing the requirement for training on them. I have to remind him that unpicking the provisions of the Scotland Act 1998 is outwith the legislative competence of this Parliament. It might be possible under Mr Wightman's amendment to require a junior minister with responsibility for planning to undergo training, as they are not formally members of the Scottish Government, but it would be odd for a junior minister to be unable to exercise a function that the cabinet secretary can. Therefore, I am sweirt to support those amendments.

Finally, amendment 310 would mean that a member of a planning authority is considered to have fulfilled the specified training requirements when they have not. It appears that the member could repeatedly start the training and never complete it, or perhaps repeatedly fail any required assessment and start again, but still be allowed to undertake planning functions. That would completely undermine the point of having a training requirement and I cannot support it.

Let me stress again that our aim is to work collaboratively with planning authorities and other stakeholders to define how performance should be assessed, how the planning performance co-ordinator can support improved performance and what training elected members should have to take part in planning decisions. Some members seem to think that I am fixated on there being a test, but I am not. However, I am fixated on the training aspect. I am happy to undergo training; that does not concern me one iota, and if there was a way within legislation to make me have to do that—other than by unpicking the Scotland Act 1998, which we cannot do—I would be happy to include that.

The statutory framework in the bill as drafted will strengthen the collaborative approach and help to demonstrate that we are serious about improving performance across the board. I ask the committee to keep the provisions as they are.

Andy Wightman: As I said in my opening remarks on the group, I support provisions to put training on a statutory footing. Reflecting on the committee's stage 1 report, I was concerned that, were ministers not persuaded that they should be treated equitably, such provisions would not be appropriate.

I have listened carefully to what the minister has said. Stage 2 debates are conducted in a rather compressed environment that does not give us a great deal of time to reflect on what people have said, but I am prepared to take in good faith the comments that there would be practical difficulties, relating to the provisions in the Scotland Act 1998, to putting in place statutory provisions that require ministers to undergo training. Therefore, I will not move amendments 311 to 313.

I have heard what the minister has said on performance in relation to Graham Simpson's amendment 17. The provisions in section 26 of the bill would change profoundly the power relationship between planning authorities and Scottish ministers in a way that would not be helpful. They would undermine the autonomy and authority of directly elected members who have the responsibility for making decisions about planning matters in their areas. Therefore, I am not persuaded by the minister's arguments against amendment 17.

This is a complicated group of amendments, and I do not have anything else to say.

The Convener: The question is, that amendment 326 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

Amendment 326 agreed to.

Amendment 264 moved—[Kevin Stewart].

The Convener: The question is, that amendment 264 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 264 agreed to.

Amendment 265 moved—[Kevin Stewart].

The Convener: The question is, that amendment 265 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 265 agreed to.

Amendment 327 moved—[Andy Wightman].

The Convener: The question is, that amendment 327 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

Amendment 327 agreed to.

Amendment 328 moved—[Andy Wightman].

The Convener: The question is, that amendment 328 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

Amendment 328 agreed to.

Amendment 321 moved—[Monica Lennon].

The Convener: The question is, that amendment 321 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

Amendment 321 agreed to.

Amendment 266 moved—[Kevin Stewart]—and agreed to.

Amendment 16 not moved.

Section 21, as amended, agreed to.

12:15

After section 21

Amendment 333 not moved.

Section 22—Fines: increases and duty of court in determining amount

The Convener: I call Graham Simpson to move and speak to amendment 329, in his name, which is in a group on its own. I would appreciate brevity from everybody, because I would like to finish this group very soon.

Graham Simpson: Convener, I am going to make your day, because I will be very brief. Amendment 329 was lodged in response to an article that was sent to *Scottish Planner.* It argued that authorities issue fixed-penalty notices for breaching an enforcement notice and that it is then possible to pay the fine and carry on as before.

I had a very useful discussion with the minister about the issue last week. He pointed out issues that he might well touch on. I am happy to withdraw amendment 329 on the basis that the minister is aware of the issue and is looking at it.

I move amendment 329.

The Convener: I wish that I had asked for brevity at the start of every group—it would have made life so much easier. Thank you, Graham; I appreciate that.

Kevin Stewart: Unless any committee member wants to hear all the reasoning for the withdrawal of amendment 329, I am happy to pass on speaking if that will help.

The Convener: It will, considerably.

Amendment 329, by agreement, withdrawn.

Section 22 agreed to.

The Convener: I thank the minister, his officials and all the MSPs who attended the meeting. Day 7 of stage 2, which is the final day, will take place on 14 November. Any remaining amendments to the bill should be lodged by 12 noon on Thursday 8 November.

12:17

Meeting continued in private until 12:29.

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