COMMUNITIES COMMITTEE

Wednesday 23 June 2004
(*Morning*)

Session 2

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COMMUNITIES COMMITTEE
23rd Meeting 2004, Session 2

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Patrick Harvie (Glasgow) (Green)
*Mary Scanlon (Highlands and Islands) (Con)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)
*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Shona Robison (Dundee East) (SNP)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Michael Lowndes (Scottish Executive Development Department)
Mrs Mary Mulligan (Deputy Minister for Communities)
Christine Munro (Scottish Executive Legal and Parliamentary Services)
Mr Mark Ruskell (Mid Scotland and Fife) (Green)

THE FOLLOWING GAVE EVIDENCE:

Jim Mackinnon (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Gerry McInally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Hub

Scottish Parliament

Communities Committee

Wednesday 23 June 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:28*]

The Convener (Johann Lamont): I welcome everyone to this meeting of the Communities Committee. Before I take agenda item 1, I want to make a brief point. Gerry McInally, our senior assistant clerk, is leaving us for other climes—he is going to work with the Scottish Parliament information centre. I want to record our thanks to Gerry for all his hard work on the committee. He has been with us for more than a year and a half—he was only a boy when he came here, but given all his responsibilities on the committee, we have managed to age him. During the time that he has been with us, we had a heavy work load and there is no doubt that that work could not have been done without his excellent efforts behind the scenes. As I have said on previous occasions, he managed to herd hens remarkably well at some of the meetings that we held outside the Parliament. I know that the committee will want to record our thanks to him for all his work. Most of it was unseen, of course, but that does not make it any less difficult to do. We appreciate his efforts and wish him well in his new post. I understand that he will come back to the committee to advise us, which will be interesting.

Items in Private

10:30

The Convener: Under item 1, we are asked to consider whether to take agenda items 5 and 6 in private. Item 5 is our consideration of whether the committee wishes to undertake pre-legislative scrutiny of the draft Charities and Trustee Investment (Scotland) Bill and, if so, what the options are for doing so. Item 6 concerns the arrangements for our away day, at which we will consider the committee's forward work programme. Are we agreed to take items 5 and 6 in private?

Stewart Stevenson (Banff and Buchan) (SNP): No.

The Convener: Do you want to discuss it, Stewart?

Stewart Stevenson: I am not clear whether there is adequate justification for holding the discussion on our away day in private. There is perhaps a case for discussing our approach to the draft bill in private, and I will be interested in the arguments that other members might make. I will not make a big issue of this, but nothing that we are going to discuss is of a nature that needs to be discussed in private. We should consider carefully each such request.

The Convener: Given that item 5 concerns our approach to pre-legislative scrutiny, it would be useful to take it in private. It has always been my view that the *Official Report* should not have to record discussions about diary dates and meeting times, for example. At one level, there is no reason why we should not take that kind of practical business in public. However, we do not need to hold in public a discussion that concerns how we match diary dates; such discussions are not about any great issues of principle. I am happy to hear the views of other members. First, let us get item 5 out of the road. Are we agreed to take item 5 in private?

Members *indicated agreement*.

The Convener: Are we agreed to take item 6 in private?

Ms Sandra White (Glasgow) (SNP): I echo what Stewart Stevenson said. There is no need for item 6 to be taken in private. The convener talked about diary dates but, at various times, the Parliament has been told that too many items are taken in private. I have to say that most of our meetings are held in the public domain, and item 6 is not important enough to be taken in private.

Cathie Craigie (Cumbernauld and Kilsyth)

(Lab): As a committee, we take seriously the issue of which items we take in private. I am sure that, if we looked at our record across the board, we would find that we had not spent a lot of our time considering matters in private.

As the convener said, the procedure would seem to have been established that we discuss housekeeping and diary issues in private. It is not worth going to the wall on the issue. People out there who listen in to the Parliament find that some of the things that go on are quite uninteresting, and they would be turned off by a discussion about our diaries.

The Convener: We are agreed that we will take agenda item 5 in private. I suggest that we discuss item 6, on whether to hold an away day, before we go into private session. I will not allow members to discuss diary dates at that time; we will do the housekeeping bit by e-mail after the meeting, through the clerks.

Stewart Stevenson: That is a useful proposal, convener.

The Convener: Are we agreed?

Members *indicated agreement*.

Subordinate Legislation

Town and Country Planning (Electronic Communications) (Scotland) Order 2004 (Draft)

10:33

The Convener: We move to item 2, which is our consideration of the draft Town and Country Planning (Electronic Communications) (Scotland) Order 2004. I welcome Mary Mulligan, the Deputy Minister for Communities, who joins us for this item—why break the habit of a lifetime, Mary?

As members are probably aware, the draft order is an affirmative instrument. Under rule 10.6.2 of the standing orders, the deputy minister is required move a motion that the draft order be approved. Committee members have received a copy of the draft order and the accompanying documentation. I invite the minister to speak briefly to the draft order; I will invite her to move the motion later.

The Deputy Minister for Communities (Mrs Mary Mulligan): Thank you, convener. The purpose of the draft order is to remove the legal barriers that prevent some aspects of the planning system from being carried out electronically. Before I touch on some of the details of the legislation, it might be helpful for me to outline the background to some of our work.

The Executive has long recognised the opportunities that are presented by new information and communication technology to increase efficiency and promote greater public involvement by making the planning system more open and accessible. The committee will also be aware of the Executive's broader commitment to modernise public services, including the 21st century government target that all public sector services that can feasibly be delivered electronically should be made available in that way by 2005.

The potential benefits from the use of electronic communications in the planning system are considerable. Practical examples might include faster—indeed, almost instantaneous—transmission between parties; reduced costs for postage, packing, photocopying and printing; and reduced storage of papers and files.

As a result, we have been working in partnership with planning authorities to make the most of the opportunities that new technology presents. However, to progress that work, we must first remove legal impediments to enable the use of electronic communications. Section 8 of the Electronic Communications Act 2000, under which

this order has been made with the Secretary of State's consent, gives us powers to amend existing legislation to achieve that aim. I understand that this is the first Scottish order to be made under those powers.

I should make it clear that the purpose of the draft order is to make it possible for those who wish to do so to use an electronic, rather than a paper-based, planning system. The existing paper-based system will continue to operate for as long as those who engage in the system wish to use it.

In drafting the order, we have recognised that electronic communications would not be appropriate in a number of areas. For example, they would not be appropriate if criminal sanctions could result from a failure to comply with certain notices, such as those that relate to enforcement, or if an electronic address would not be known. Existing arrangements will continue for such cases.

When we carried out a full consultation exercise on our proposals and on an initial draft order, we received widespread support. The responses that we received inform the final draft order that the committee is considering today.

Finally, members are no doubt aware that we hope to take forward our programme of planning system reform by means of a planning bill that will be introduced later in this parliamentary session. Future primary and secondary legislation will be prepared to ensure that it is compatible with electronic working.

I am happy to take questions before I formally move that the order be agreed.

Stewart Stevenson: I want to say at the outset that, despite any comments that I might make, I fully support the policy objective behind the order. I agree with the minister's wish to make it possible for anyone who wants to do so to use such communications over the widest possible range of interactions with all levels of government.

That said, my concerns about the order are quite different from those that were expressed by the Subordinate Legislation Committee and are based on my unfortunate specialist knowledge of electronic communications. I started using electronic mail in 1980, so I have a certain amount of experience with some of the difficulties associated with the subject. I have already given a minister a copy of my notes, and I hope that she will accept that I am not trying to make any political points. As I have said, I support what she is trying to achieve.

Article 7(2) of the draft order, which relates to applications for review of old mineral planning permissions, says:

"Where an electronic communication is used to make an application … under"

various paragraphs in schedule 9 to the Town and Country Planning (Scotland) Act 1997,

"the applicant shall be deemed to have agreed"

to use electronic communication. There are similar provisions elsewhere in the draft order, but we need not dwell on them.

That provision raises a very real difficulty, because e-mail technology in no sense guarantees that the sender of an e-mail as it presents to the receiver is the actual sender. I have prepared a wee note for colleagues that I do not wish to read into the *Official Report*. It describes in three lines how someone can use the software on a standard PC to effect what is called spoofing.

Most of us have received spam e-mails that try to sell us things. Given the way in which e-mail works, there is scope for people to be

"deemed to have agreed … to the use of electronic communication",

despite the fact that they might not know that someone had sent an e-mail in their name, which can be done without the need for access to the person's computer and software, the services that they have contracted or anything over which they have any control. I would be interested to hear the minister's comments on that.

I will list all my concerns. Article 3 would amend the 1997 act to add new paragraph (c) to section 130(2), which would use the phrase

"in the ordinary course of transmission"

to try to determine when it would be reasonable for people to have received an e-mail. The phrase is meaningless, because it has no standard definition in the context of e-mail. The situation for the Post Office is different; there is a definition of first and second-class post. It is important to realise that the sending of e-mails involves all sorts of bits of technology, in relation to which neither party has any contractual relationship that can affect the time that it takes for a piece of electronic mail to be delivered. Delivery can take days in certain circumstances, over which neither sender nor recipient has the slightest control, particularly when one party is unaware of the other party's desire to interact electronically.

Article 4(3) would introduce new subsection (4) in section 271 of the 1997 act, which would require that

"the notice or other document shall be—

(a) capable of being accessed by the person mentioned in that provision;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference".

The meaning of "capable of being accessed" is unclear in the context of electronic communication. Capability of access on the part of the recipient of the message depends on their having physical access to equipment that can receive the e-mail and on their being at the location where the equipment is situated. It is not the same as a piece of mail dropping through the mailbox. Other parties are aware that a letter has been delivered, although they will not be aware of the letter's contents unless it is opened. E-mail does not work in that way. Furthermore, the recipient might be in another country and unless they make arrangements to access e-mail from anywhere—as I do—they might be unable to access their e-mail and unaware that a message has been sent.

The message would have to be

"legible in all material respects",

but not all e-mail systems provide the same capability. The basic requirement for e-mail is to handle text, so the requirement in new section 271(4)(b) of the 1997 act might restrict the ability to send diagrams, which I suspect might often be necessary.

Finally, it is not at all clear what the requirement that the message must be "permanent … for subsequent reference" would mean in the context of e-mail. In the notes that I provided, I suggest that that could be achieved only if the sender maintained a permanent website that could be accessed by the recipient. Of course, the sender could do that.

Article 6 defines when an e-mail is "received", but I do not know what "received" means. It might mean that an e-mail has arrived on the server. For example, members of the Scottish National Party have SNP e-mail accounts and there is an SNP computer somewhere—I do not know where it is—that receives mail that is sent to my address at snp.org. Does that constitute "received" for the purposes of the draft order, or is an e-mail received only when it is transferred to my computer, which happens continuously if there is a broadband connection, whether or not I am present? Is the e-mail received only when I open it and read it? There are all sorts of issues.

Article 6 also refers to the "working day", but it is difficult to establish what that means. The definition of a working day excludes, for example, local holidays—that is the situation in relation to other legislation, so there is nothing exceptional about the provision. However, e-mail can be received at any physical location, so the operation of local holidays in relation to the definition of when e-mail is received is unclear. There is probably considerable uncertainty in people's minds about the matter, because the legislation that defines Scottish bank holidays does not require Scottish banks to take those holidays. Almost no Scottish bank—probably none of them—has a bank holiday schedule that conforms to Scottish bank holidays as defined in the appropriate legislation. There are a series of issues there.

The overarching point is that—quite reasonably—many of the things that happen in the postal world have been translated into the electronic world. However, many of the things that work in the postal world simply do not work in the electronic world. I am not at all clear that the draft order before us is drafted in a way that will mean that we will have an e-mail system for interacting with government that becomes trusted, is reliable and delivers the benefits that we want. If we start off on the wrong foot with the initial interaction, that will inevitably devalue and debase people's trust in that way of working. That is why I am making much more of a meal of this matter than the minister might expect. I want the proposals to work, which I think is vital.

Having said all that, if the minister and her officials can provide the necessary advice, I will, with caution, support the motion on the draft order. We have until 6 September, which is quite a lot of time on the calendar, if not in parliamentary days, during which we can consider the matter further in various ways. I will be interested in the minister's comments. Thank you for your tolerance, convener.

10:45

The Convener: You are welcome.

Mrs Mulligan: I must say at the outset that, not having been such an aficionado of e-mail as Mr Stevenson has been since 1980, I am glad that I have my colleagues with me this morning. I will defer to them in answering Mr Stevenson's detailed questions. I accept his genuine support for the policy and his desire to get it right.

Some local authorities have already been taking forward the provisions that are covered by the draft order. We have drawn from their experience to examine and address some of the issues involved. I hope that that has been reflected in the draft order. My other comment—on the least techie of Mr Stevenson's questions—is on the point about spoofing. I recognise the issue of whether or not it can be guaranteed that the person named as the sender is the person who sent the message. Although I do not have any explanation as to why people want to do such things, we must accept that the same thing can happen now, under the present system: someone can submit a written application that is not in fact

from the person from whom it is supposed to be.

I recognise that we need to address some of those problems in making the proposed changes. We will try our hardest to ensure that any system that is put in place is suitable for delivering the planning service that we want people to have. It is about making the system more accessible.

With that, I ask Michael Lowndes to answer some further aspects of Stewart Stevenson's questions. Christine Munro will answer the rest.

Michael Lowndes (Scottish Executive Development Department): Mr Stevenson made the very appropriate point that the electronic transmission media involved are extremely diverse. We deliberately did not attempt to set out in the text of the draft order specifications for the performance of electronic communications or service standards. Those are technical issues, which we will address in the circular that is to accompany the order. We will very much bear in mind the points that Mr Stevenson makes.

The expression "ordinary course of transmission" will change over time, as technology develops. We will give additional consideration to whether we can clarify the meaning.

Turning to the comments about article 4(3), on the phrase "capable of being accessed", there are two situations to consider: either an applicant is sending a communication to a planning authority or a planning authority is responding to an application that has been sent to it. If a private individual initiates an exchange of electronic communication, it must be assumed by the planning authority that they are willing to continue using electronic communication for the purposes of their application. The provision bears more on the situation in which an applicant wants to send an electronic communication to a planning authority. They need to satisfy themselves that the authority is capable of accessing that communication. That is another issue that we will deal with in the circular, as is the issue of planning authorities having electronic communication systems that are capable of acknowledging the receipt of messages, which is a very important qualification.

In the circular, we will also pay attention to the definition of when an e-mail has been received. Until now, we have assumed that an e-mail is received when the message has been received by the recipient's terminal, irrespective of whether the recipient has read it.

Christine Munro (Scottish Executive Legal and Parliamentary Services): The provisions on working days are designed to give the sender and the recipient of the electronic communication some certainty if they are not sure when the communication would be deemed to have been received because, for example, they sent it over a weekend or on a holiday. Under article 6(3), they would be able to be certain that the communication had been deemed to be received the next day. In other words, if there is any question about whether there was a holiday in the area in which the communication was received, the sender could be satisfied that it would be considered to have been received on a day when the office, or wherever it was being accessed, was open.

When a sender sends a transmission, they will have to be satisfied whether a day is a working day or a bank holiday in much the same way that they would if they were posting something. If someone who posts something is unsure whether a particular day is a holiday, they make provision for that and give themselves enough time; the situation is much the same with an electronic communication. However, we can assume that, if something is sent by post but the post cannot be delivered, the item would be considered to have been received in an office on the next day that that office was open.

Stewart Stevenson: I can see how that applies to the recipient—the public body—but how does it apply to the individual, who might be a mobile member of the public and therefore potentially subject to different holidays? For example, I am in Parliament for some of the week and in my constituency for the rest of the week. There are points in the draft order that mean that the time at which the applicant receives something is of essence.

Christine Munro: The point that you raise about somebody possibly moving around or being in a different area is the reason why the provisions are designed around where the recipient might be. The idea is that the recipient of an electronic communication is not under any obligation to have been considered to have received. The sender must realise that, when the e-mail is sent, the recipient might be able to say, "I wasn't able to get that communication because it was a holiday, but we are taking it as having arrived on the next working day."

Michael Lowndes: The deeming provision in article 7(2) provides that a person who uses electronic communication agrees to such communication for further exchanges in connection with the procedure. It is for the person who initially makes the application to satisfy themselves that they will be able to access further electronic communications. If people are in any doubt about being able to access further communications, they can always say that they would prefer further communications to be in writing.

Stewart Stevenson: I wonder whether I can

close this discussion, because we have gone as far as we are going to go. The proposed new subsection (5), as set out in article 4(3) of the order, contains a long list of exceptions relating to the serving of a variety of notices. I realise that this question might be difficult to answer, but are there any notices—other than those that are already excluded—that a public body might serve by e-mail? I am thinking of cases in which the time of receipt by a member of the public could be of legal significance.

Mrs Mulligan: I want to be sure that I understand the question. Are you asking whether there are notices, other than the ones in the new subsection (5), for which the date on which they are sent would be legally significant in effecting an application?

Stewart Stevenson: The minister has understood exactly.

Christine Munro: The order has been prepared so that, if the serving of a notice by electronic communication is not excluded, it is enabled. Everything that is not deliberately excluded is enabled; in other words, if e-mail is not on the list, it can be done by e-mail.

In preparing the list of exclusions, we considered carefully the legal implications of the time when notices are served and we considered how people might be adversely affected if they were not able to receive notices electronically. We have tried to ensure that no one will suffer because notices can be served electronically.

Ms White: My question is not on a technical matter, but I thank Stewart Stevenson for raising those issues. My question is to do with points that were raised by the Subordinate Legislation Committee, which said that the legislation is still defectively drafted. However, the minister has said that she believes that the drafting is correct and that even if it were incorrect it would not prejudice the proper application of the order in practice. That is not a very satisfactory answer. That committee also expressed concerns about amendments to the legislation. The Executive responded to those concerns by saying that it would complete consolidation of this SSI and various other instruments

"when time and resources permit."

I am also a bit worried by that answer. No date is given.

I am concerned by the points that the Subordinate Legislation Committee has raised and I ask the minister to clarify the present position. As we can see from its report, the Subordinate Legislation Committee has raised such issues on numerous occasions and is still doing so. I would not be happy to agree to an instrument when the Subordinate Legislation Committee has raised such valid concerns.

Mrs Mulligan: I hope that the fact that we have made changes will not be regarded as something to be criticised. We have responded to issues that were raised and I do not think that we should be criticised for that. I reassure Ms White that we believe that the order will enable us to do what we seek to do, which is to enable people to access the planning system electronically and to be assured that, if they do so, their dealings with the planning system will be every bit as competent and efficient as they would have been had a different means of communication been used.

I ask Michael Lowndes to respond to the points that have been raised about the Subordinate Legislation Committee's concerns.

Michael Lowndes: The Subordinate Legislation Committee asked when we would consolidate the general development procedure order and the general permitted development order. We have intended to consolidate both the orders for some time—we see their consolidation as being desirable, but it is not our highest priority at present. I am sure that committee members will recognise that the Executive is promoting an ambitious programme of modernisation and reform of the planning system and we hope that we will, when time and resources permit, be able to carry out those consolidations. However, we are at present unable to give a specific commitment on when that would be.

11:00

Donald Gorrie (Central Scotland) (LD): If I said that I would do something "when time and resources permit", that would mean that it was at the bottom of my heap and that I would never get there. Can you assure us that the situation is slightly better than that, and that something will be done?

Michael Lowndes: It is about in the middle of my heap.

Donald Gorrie: It is in the middle of your heap. If I understand the matter correctly—which is open to question—and setting aside the argument about when the e-mail actually arrives, the recipient is allowed seven days to respond. Is that correct?

Michael Lowndes: Are you referring to the giving of notice when the applicant does not want to continue using electronic communication?

Donald Gorrie: I meant an application for review of old mineral planning permissions, but there were several others where seven days—

Michael Lowndes: I think that that is in article 7(2)(10); it is the period of notice for an applicant

to indicate that they do not want to continue using electronic communication.

Donald Gorrie: Are the various deadlines for electronic communication different from the deadlines for people like me, who write on a piece of paper and send that in by post? Are the e-mailites advantaged or disadvantaged in the timetable of events?

Christine Munro: No. Any time limits that are set down in legislation in relation to an application or an appeal that is carried out in the normal way, by post, would be no different from e-planning. The time limits would be exactly the same.

Donald Gorrie: Thank you. That is what I wanted to know.

Cathie Craigie: I welcome any measures that will help to modernise the planning system and speed it up. That will have benefits for individuals and business interests. I was a bit worried when Stewart Stevenson started asking so many technical questions; I thought that we might have got it wrong or that there were issues that we might have missed.

I would like to ask some simple questions. Can you assure me that if we pass the instrument, neighbour notifications will be carried out in the same way, and that they will be delivered in paper form? Can you confirm that the process of dealing with an application through electronic means should be by mutual agreement, and that the applicant, whether an individual or a company, has to agree that the process will be done electronically? Can you give me any information on pilot projects that have been carried out by local authorities in Scotland? Will electronic transmission and the process for dealing with the application be agreed by the applicant, or the agent on the applicant's behalf, if the applicant is dealing with an architect or whatever?

Mrs Mulligan: I will seek to address Cathie Craigie's questions first and any additions can come from my colleagues.

Cathie Craigie is correct that the Executive is determined to modernise the planning system as a whole. I am aware that the committee will later this morning receive a presentation on how we are making progress along that road to make the system more efficient for applicants, for people who are concerned with developments in their areas and for other interested parties.

The order that is under discussion is part of that process. Michael Lowndes referred to his pile of things that need to be done, which he has partly because so much work is going on to develop the planning system. We accept that the matter that Sandra White and Donald Gorrie asked about needs to be dealt with. It would be incorrect to say that it will be dealt with immediately, but we recognise that there must be action.

I understand that neighbour notifications will continue to be issued initially on paper, as they are at the moment. As for whether the process will operate by mutual agreement, the electronic system will operate only if the applicant requests it. There is no question that local authorities will require people to apply by e-mail. The system will enable people to use whatever form of application most suits them and their circumstances—it gives them another option. The system will operate by mutual consent, because it will work at the applicant's behest.

I ask Michael Lowndes to give the committee examples of what the pilots have covered.

Michael Lowndes: Several authorities have made considerable progress on preparing e-planning systems—most notably East Lothian Council, Stirling Council and the City of Edinburgh Council, which are in an advanced state of preparation for operating e-planning systems. The Executive has formed an e-planning group with all local authorities to share information and to explore technical issues that relate to the operation of e-planning systems. Around Scotland, some authorities are very advanced on, and are almost ready to operate, e-planning, whereas others are in different states of preparation. Through the e-planning group, we intend to disseminate as much information as authorities need about how to establish and operate e-planning systems.

Cathie Craigie: Have the pilots dealt with the technology and the equipment? I was looking for information on applications by individuals or companies that have used the pilots. Do you have information about people who have used an electronic system to determine and process their applications?

Michael Lowndes: I am not familiar with the detail of what East Lothian Council, Stirling Council and the City of Edinburgh Council do at the moment. If the minister agrees, we will gather that information and write to you.

Mrs Mulligan: I am sorry that North Lanarkshire Council was not involved in the pilots; I am sure that Cathie Craigie would know much more about them if that had been the case. I visited the City of Edinburgh Council to see the work that it has been doing and to discuss the pilot with planners and a few invited people who had submitted applications. Those people felt that the move was positive and that no significant problems had arisen with submitting and processing applications electronically. People felt that the system offered another mechanism for making applications and that they had been able to access it.

That council also produces lists of applications that can be accessed on a web page, so people can see those lists without having to go to a planning office or another council office. That is a way of opening up the system so that more people can be aware of what is happening in planning and what applications are being registered.

The thrust is to open up the planning system, make it more accessible, make it easier to understand and give people the opportunity to analyse and obtain information about planning applications that have been submitted, which was previously more difficult to do.

Ms White: I am raising these issues because we want the legislation to work. I want to ensure that there is a proper legislative process. That is why I am seeking clarification that the issues that the Subordinate Legislation Committee, other members and I have raised will not stop the legislation being implemented properly. Cathie Craigie mentioned neighbour notification, which is referred to in paragraph 2 of paper COM/S2/04/23/1. You said that initially such notification would be available on paper. I was concerned about that, because the paper states that neighbour notification will be exempt from the provisions of the instrument and that people will be able to get a paper copy. I do not want to take up all of the committee's time, but could you write to us to clarify what you meant when you used the word "initially"? Is there a timescale for stopping publication of the documents on paper? I need to be reassured that the points that have been raised will not stop the legislation being implemented, because we want to tackle the planning situation.

The Convener: The final contribution will be by Patrick Harvie. We will then hear from the minister again.

Patrick Harvie (Glasgow) (Green): I share members' enthusiasm for getting the system to work properly. Can you say something about how the instrument will engage communities and objectors? We have said a lot about how the relationship between applicants and planning authorities can be managed through electronic systems, but not much about objectors. Will people be able to see or to hear on the grapevine that an application has been made in their neighbourhood and to get detailed information on the planned development from their council's website so that they can lodge an objection? In the past, I have submitted information for a planning objection by e-mail, but only after phoning up to ask whether it was okay. There was no obvious route in for that.

I would like you to comment for the record on two issues relating to access. First, various aspects of the Disability Discrimination Act 1995 apply to websites and so on, but many public authorities are still not very good at addressing the matter. Will attention be paid to that? The second issue is access for people who use free software. Many public authorities put out information in electronic forms that are not available to people who use free software. Will attention also be paid to that point?

Mrs Mulligan: I have referred to my visit to the City of Edinburgh Council, where I examined the planning lists that the council provides. People may access that list, see what applications have been made and decide whether they object to them. We should provide additional information in ways that suit people's circumstances and we should make it possible for them to seek that information. That is an appropriate way of encouraging people to become involved in the planning system.

If the committee agrees to the order today, it is important that we ensure that the work of the e-planning group to which Michael Lowndes referred is progressed, and that all local authorities reach the stage of being able to deliver the service. We must also publicise it, because there will be no point in our having the system if people do not know that it is available. Patrick Harvie said that he had to make the initial phone call. We want local authorities to ensure that people in their communities know what is available—that will be one of their responsibilities.

This is not the end of the line when it comes to developing electronic processes to provide services. I am sure that there will be developments in the future. The comment was made earlier that it looks in some ways as if the legislation is open-ended. That is related partly to the fact that there will be on-going developments in service but also to the fact that there will, no doubt, be on-going development of the technology that is available. We want where possible to be able to adapt to that development. It is important to be open to change, so we must acknowledge that technology will develop.

It is absolutely essential that provisions of this sort be based on our equal opportunity principles, and that people with disabilities and people from ethnic minority communities be given the same opportunity to use the system as everyone else. We need to be aware of the particular issues that they may face in doing so and to build that consideration into the system.

Patrick Harvie: I also asked a question about software.

11:15

Michael Lowndes: The software point is something that we will deal with in a planning advice note that will be issued later in the year.

Through the order, we are trying to remove legal impediments to the use of e-planning. The technical issues that we have taken note of will be addressed in the circular and a planning advice note. Advice will also be disseminated from the e-planning group.

Mrs Mulligan: Can we go back to Sandra White's final point?

The Convener: Yes.

Michael Lowndes: Sandra White referred to the minister's statement that the initial notification to neighbours who have an interest in an application would be by post. We used the word "initially". The whole principle of the e-planning order is that applicants can choose whether to use electronic or postal communication in any planning procedure. If a neighbour received postal notification of a planning application in their neighbourhood, they could choose whether to communicate with the planning authority by post or electronically. Nothing more sinister than that is meant.

The Convener: We have given the order more of a hearing than I expected.

Motion moved,

That the Communities Committee recommends that the draft Town and Country Planning (Electronic Communications) (Scotland) Order 2004 be approved.—[*Mrs Mary Mulligan*.]

The Convener: The question is, that motion S2M-1403, as printed on the agenda, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Motion agreed to.

Stewart Stevenson: Might I raise a timing issue?

The Convener: Let us finish the procedure first. I ask members to agree that we report to the Parliament on our decision and our consideration of the order. Is that agreed?

Members *indicated agreement*.

The Convener: If members have any concerns that they would like us to report to Parliament, this is the appropriate time for them to raise them.

Stewart Stevenson: I note that the last date for overturning the order is 6 September. In parliamentary terms, that gives us very little time. I abstained from the vote because I want to read the *Official Report* and ensure that I am satisfied, not because I am trying to impede the progress of the order. I have another slightly more complicated point to make that I do not want to raise in public; therefore, I shall write to the minister separately and copy you into that correspondence, convener.

None of that affects our reporting to Parliament but, in my view, there are issues that require further consideration. I hope that the minister and her team will read the *Official Report* carefully and ensure that Parliament and the committee have a more considered opportunity to respond to some of the points. It might be useful for us to indicate in our report to Parliament that that opportunity has been asked for and that the minister has committed to giving it.

The Convener: Would that be acceptable? The *Official Report* will be available and a motion will be lodged in Parliament, at which time such matters can be raised by individuals within or outwith the committee.

Mrs Mulligan: I am grateful to Stewart Stevenson for the note that he sent us, which we read this morning. If there are points in that note on which we feel we could elaborate further, I will be happy to write to Stewart Stevenson. I will also send a copy of that letter to the convener. If members wish to raise further points, we will try to use the time that is available to us, if not parliamentary time, to respond to some of them.

The Convener: I thank the minister for her attendance and suspend the meeting for two minutes.

11:19

Meeting suspended.

11:23

On resuming—

Planning

The Convener: We come now to agenda item 3. I welcome the officials from the Scottish Executive Development Department: Jim Mackinnon, chief planner, and Tim Barraclough, head of planning division 1.

We have rather fallen behind time. This is an important agenda item, but I am keen that we give sufficient time to the next agenda item, on petitions. I am aware that some members must leave at 12.30 pm—Stewart Stevenson has already given us his apologies because he has to attend another committee meeting. The format for this part of the meeting is that the officials will give the committee a brief presentation. We have discussed the questions that we want to ask, but I ask members to concentrate their minds a little. I would like to complete this part of the meeting by 12.10 pm. I do not want to curtail anyone and I will not do so, but it would be helpful if people could curtail themselves.

We are at the beginning rather than at the end of a dialogue with the Executive, so members should not feel that they must discuss the issues with ministers by proxy. Our witnesses are officials, not ministers. The officials know the limits of their authority and they must tell us if they feel that it would be inappropriate for them to answer certain questions. I will not allow members to try to persuade the officials to answer such questions. We can take up such matters with ministers.

I thank the witnesses for coming and for supplying copies of the slides that they will use in their presentation. We will ask questions after the presentation.

Jim Mackinnon (Scottish Executive Development Department): Thank you. I was asked to provide an update on our proposals to modernise the planning system. I will concentrate on the national planning framework and on two consultation papers: “Making Development Plans Deliver” and “Rights of Appeal in Planning”. Those papers, along with the document “National Planning Framework for Scotland” were published in April.

We embarked on the national planning framework for a number of reasons. First, the geography of Europe has been changing and we needed to reflect on what that means for Scotland. Denmark, for example, has not just reflected on the matter but has taken action by completing the fixed link to Sweden. There were other reasons. For example, reports from the pathfinders to the Parliament initiative indicated the need for a high-level vision for land use and infrastructure in Scotland. There was also a perceived gap in Executive policy; the Executive had policies on the environment and the economy but no policy on the geography of Scotland.

We adopted an inclusive approach to the preparation of the framework. There were two rounds of regional seminars in five different parts of Scotland. We held a wide range of meetings and gave presentations to members of the Scottish Parliament and councillors. An ad hoc ministerial group oversaw the process. The document that we prepared had to recognise the diversity of Scotland and provide a national planning framework. It was not intended to address issues that can and should be dealt with locally. To use a good European term, it had to respect the principle of subsidiarity.

We wanted to consider how Scotland had been changing and how it is likely to change in the future. Much has been said and written about the challenges that are posed by population decline but, if we unpack the headline figures, the results are revealing. During the past 20 years, there has been an 18 per cent decrease in the number of people under 15 and a 29 per cent increase in the number of people over 75. Scotland has the lowest birth rate in the United Kingdom and the age profile of migrants demonstrates that the people who leave Scotland are in the 25 to 34 age group, whereas inward migrants tend to be over 45.

There is a distinct geography of population change. Major growth is forecast in the east of the country and decline is forecast in Aberdeen, Dundee, Inverclyde and two of the island groups: the Western Isles and Orkney. However, because household size is falling, the number of households is expected to grow by 7 per cent by 2016. That is a significant reduction from previous projections, but increases of 20 per cent or more are forecast in the east of the country—in West Lothian, for example. Decreases are forecast in Dundee and Inverclyde.

Infrastructure deficits have emerged as a major issue in the national planning framework. The provision of education and health services is causing concern in growth areas and there are major difficulties with water and drainage in parts of Scotland where significant priority has been attached to regeneration.

Employment change also has a distinct geography. Major employment growth has been experienced in Glasgow as a result of sustained regeneration efforts, although half the jobs in the city are not taken up by Glasgow residents. Edinburgh, West Lothian, Midlothian and Perth

and Kinross are also experiencing growth. Areas that are experiencing decline include an arc that runs through Dumfries and Galloway, Ayrshire and Renfrewshire to West Dunbartonshire, as well as Dundee and all the island groups. New jobs have been concentrated around motorway junctions, airports or arterial roads and there has been a clustering of activity, such as the technology parks in Edinburgh. Town centres have been a major focus of growth in the service industry, including financial and professional services, public administration, retailing and entertainment.

The document "The European Spatial Development Perspective" asserts the benefits of balance in a polycentric settlement pattern, but it is difficult to envisage how Scotland could ever achieve such a geographic nirvana. Even by European standards, we have some extremely sparsely populated areas and the sense of remoteness or wilderness is an important asset, particularly for the leisure and tourism industries. At the other end of the spectrum are cities. Our cities are small in European terms, but they have great significance for Scotland's economy. The cities offer well-paid jobs, a range of cultural attractions, universities and air links. However, around two in five people in Scotland live in small towns. Some of those towns are absolute gems; others show the effects of economic restructuring.

There are two overarching themes in the national planning framework, the first of which is improving connectivity. That is about recognising that Scotland's position at the extreme north-west of Europe is fixed and that we need to respond to the continent's changing geography. It is not just about external connections; improving internal connectivity is also important to promote economic development outwith the central belt and to support regeneration. The second theme is about maintaining the quality of our best areas and addressing the deficiencies of others.

11:30

Below the overarching issues, spatial aspects of economic development, transport, water and drainage, renewable energy and waste are discussed. We have also drawn up spatial perspectives for different parts of Scotland. Not surprisingly, Edinburgh and Glasgow are recognised as two economic and cultural anchors, linked by a fast transport system. I indicated that our cities are small in European terms, but the combined size of the cities of Edinburgh and Glasgow resonates at European level.

Not all areas can be tackled at the same time and the framework recognises a number of areas in which co-ordinated action is required. A planning framework for west Edinburgh was drawn up and published in spring last year. The framework was influential in securing the commitment to service Edinburgh airport with light rail. As a result of the air transport white paper, there is a requirement to reserve land for a second runway, so we are committed to revising the west Edinburgh planning framework.

In the west of Scotland, significant investment is under way on the Clyde waterfront, where there are significant issues surrounding access, land remediation and flooding. On the east side of Glasgow, there is the Clyde gateway. Construction of the M74 extension will lead to significant improvements in accessibility to an area with a substantial concentration of deprivation and dereliction. There is a major opportunity for sustainable regeneration—not just building business or retail warehouse parks or executive housing, but seeking opportunities such as greening through social forestry. The area has the potential to be a long-term development reserve.

The framework recognises the Aberdeen-Edinburgh-Newcastle corridor, which includes four cities with universities, plus St Andrews. We believe that there is significant potential for linking knowledge-based expertise and initiative along the corridor. It is interesting that, although Aberdeen and Newcastle are equidistant from Edinburgh, the train journey from Edinburgh to Aberdeen takes an hour longer than the journey from Edinburgh to Newcastle. Reduced journey times can help to unlock the potential that exists and can enable us to capitalise on opportunities in countries bordering the North sea and the Baltic. The north-east faces a potential loss of 9,000 oil-related jobs, but there is scope to diversify the economy in the fields of renewable energy and media. Dundee faces major regeneration challenges. Bringing the city within one hour's journey time of Edinburgh could assist it in that task.

Ayrshire and the south-west are recognised and important gateways, especially to and from Ireland, which is important for Scotland economically and culturally. The aim is to build on the success of Prestwick, which has been Scotland's fastest-growing airport, and to realise the potential of deepwater assets at Hunterston.

Planning in rural Scotland has long had a bad press. Indeed, it has been presented as continuing the work of the Highland clearances. Recently, we published a draft Scottish planning policy on rural development, which emphasises the importance of a planned approach to promoting development. Under the reform of the common agricultural policy, land management contracts will be introduced that will bring together agricultural potential, environmental character and economic opportunities. Higher education is also a catalyst for economic development. A particularly important example of that is the Crichton campus

in Dumfries. It is not surprising that there are also opportunities based on natural resources, not least renewable energy, but also the processing of food, especially fish.

The fragile areas programme and initiative at the edge recognise the special challenges that face peripheral, sparsely populated areas. The area that faces the most acute economic and demographic challenges is the Western Isles, which may experience a population decline of 17 per cent by 2018. Here peripherality and depopulation combine to present major challenges, but the area has a unique cultural and natural heritage that, together with a strong identity, may prove to provide a sufficient mass to achieve long-term regeneration.

The framework is not a master plan, but it highlights the long-term issues and choices that face Scotland and is an important input to policy and spending decisions. We see the publication of the framework as marking the beginning of a debate on Scotland's future and intend to update it every four years. Fundamentally, it is about Scotland looking forward and outwards.

Development plans are a key means of advancing the framework. On 1 April, the consultation paper "Making Development Plans Deliver" was published. This was the follow-up to the review of strategic planning, the conclusions of which were announced in June 2002. The review was about the overall structure of development planning, rather than a detailed focus on process and procedure, which we felt would get in the way of a more general debate.

The conclusions of the review indicated that there would be a single tier of development planning across Scotland. Structure plans were to be discontinued for every area and replaced by city region plans focusing on the four largest cities. We came to that conclusion because only in the city regions are there genuinely strategic planning issues relating to land and infrastructure that cross administrative boundaries.

We have now announced changes in the process by which the city region plans will be drawn up and in their content. The process must be speeded up and significant changes must be made to the approval process. That will involve a mandatory public examination, as well as reducing the time that plans spend with ministers. At the heart of the city region plans must be a long-term settlement strategy, in which the trade-offs between locational options are identified and evaluated. We are looking for plans to be shorter and written as a narrative.

The record on local planning makes dismal reading. Almost 40 per cent of plans were adopted 10 or more years ago. That is difficult to defend when we have had a plan-led system for nigh on 15 years. We were convinced that no procedural quick fixes were available and that modernisation could be achieved only by concentrating on the following themes.

The first theme is management. If pressed to describe the one barrier to improved performance in development planning and development control, I would say that it was the lack of effective management. That embraces political commitment and senior management support.

Consultation is a key element of the reform package. We have made several proposals to secure more effective engagement, including the need for councils to adopt a targeted approach to consultation and the possible introduction of neighbour notification on key proposals. We have also floated the idea of imposing a statutory duty on key agencies to engage with the development plan.

Another element is focus. Many plans have lost a clear sense of their purpose or identity. Too many plans have become documents in which everything is relevant. That attempt at achieving comprehensiveness has often been at the expense of comprehension.

The final element is delivery. We have proposed an action plan that will be updated every two years to say how a plan is being progressed. We must seek to operationalise development plans. The aim of that is to make clear who is responsible for what and when action will be taken. If plans are not seen to make a difference, why should stakeholders engage with them? We have also floated the idea of sanctions when plans are not kept up to date.

Several factors fuel the demand to extend the right to appeal planning decisions. At the most basic level, many regard the planning system as having a fundamental unfairness, because developers have the right of appeal whereas communities whose lives may be fundamentally altered do not have a similar right. Added to that is the concern about the tendency of some environmentally damaging or obtrusive operations to locate next to less-affluent communities that do not have the expertise or resources to repel boarders. However, if the evidence from Ireland is anything to go by, it is more likely that affluent communities would activate a right of appeal.

The subject raises all sorts of issues. First and foremost, it needs to be recognised that the matter is complex and attracts polarised views. A range of questions is involved. Should we withdraw the right to have an inquiry into local plan objections and leave the method of dealing with them to the reporter? If a third-party right of appeal is to be introduced for planning cases, why should it not be

introduced for other consent regimes? What level of additional resources will be required? If the number of inquiry reporters must increase and most are recruited from local authorities, what are the implications for the planning services locally? What are the implications for the recruitment of people into the profession generally?

The consultation paper "Rights of Appeal in Planning" sets out the arguments for and against a third-party right of appeal and four options for change. We involved a stakeholder group in producing the consultation paper. The first option is to introduce an extended right of appeal that is based on the four categories in the partnership agreement. The second is to keep the status quo. Ministers were keen to emphasise that that would mean maintaining and accelerating our modernisation programme. The third option is maintaining the modernisation programme but adding requirements on local authorities to hold hearings in some circumstances and to notify the Executive of not only structure plan departures, but local plan departures. The final and more radical option is a completely new appeal system that would give first and third parties equal rights but would introduce a screening process to sift out appeals when no substantive issues were involved.

The exercise is being undertaken from a neutral standpoint. It concerns not how but whether to introduce a wider right of appeal. In the light of press reports earlier this week, I reiterate what the Minister for Communities, Margaret Curran, said on Monday:

"I can categorically state that no decision has been made on … Third Party Right of Appeal. A detailed consultation was launched on April 1 and continues until the end of July."

An ambitious planning reform programme is under way. As the minister said in her statement to the Parliament in April, we intend to bring together our final proposals in a single document that will identify what is for legislation, for policy, for guidance and for advice.

The Convener: I thank Jim Mackinnon for his presentation. I will kick off the questions. Successful implementation of the national planning framework will depend on co-ordinated action by all Executive departments, local government and the private sector. How good we are at joined-up working is an issue. Is the Executive committed to joined-up working? How is that being developed? How will the Executive involve local authorities and the private sector? How will implementation of the framework be monitored and reviewed?

Jim Mackinnon: The implementation is already having an impact in the Executive. For example, we are refreshing "The Way Forward: Framework for Economic Development in Scotland" and taking spatial factors into account. A consultation paper on water and drainage infrastructure will go out shortly, which will address service and development issues. We also have the ministerial group on regeneration.

We work closely with local authorities. Every six months, we have meetings with heads of planning. We also visit local authorities regularly. The authorities will have to take the framework into account in formulating their development plans. As I said, the framework is national, not local. A lot of flesh has to be put on the bones—for example, in defining the boundaries of sites. That is being done in partnership with local authorities—for sites in the west of Edinburgh, for example. We hope to work in partnership on development plans as well.

Scott Barrie (Dunfermline West) (Lab): You have touched on the proposal for four city region plans and on the proposal for the removal of strategic-level plans in the rest of Scotland. What effect will that have on areas that fall outwith the city regions?

Jim Mackinnon: When we first considered the issue, we asked ourselves, "Is there a case for two tiers of strategic planning throughout Scotland?" In some of the remote rural areas, few issues arise to do with pressure for development. As we considered reform of the planning system, we felt that there was no case for having two tiers. Most rural authorities have supported that idea—especially the elected members, who realised that, in the structure plan and the local plan for their areas, the same issues were coming up time and again. Therefore, we felt that it was worth trying to define what we mean by strategic. If one talks about Edinburgh, one is talking about growth and how to manage it. Edinburgh cannot cope with all the growth by itself, so there is an impact on the surrounding councils, both south and north of the Forth. However, if one is talking about Dundee or Glasgow, one might be talking about regeneration. Lots of greenfield release impacts on the potential to regenerate cities. Therefore, we felt that, in the city regions, having two tiers of development plan was justified.

The national planning framework will provide some context for development planning in areas that will not have two tiers, so we are reasonably comfortable that a strategic context can be provided either by the national planning framework or by councils setting a framework for their more area-specific plans through their local plans.

Scott Barrie: How do you intend to balance the proposed requirement to ensure that development plans are kept up to date, which seems to have been one of the biggest problems in the current system?

Jim Mackinnon: You are right; we have to face that challenge. As I have said, 40 per cent of plans are more than 10 years out of date. In the development industry, there is a lot of support for the idea of sanctions for councils that fail to keep their plans up to date. That issue is highlighted in the consultation paper. However, councils feel that they are under pressure and lack resources. Major research is under way into the resourcing of planning departments.

The heart of a modernised planning system must be up-to-date local plans that command widespread support—not just from the development industry but from local communities. People have to be able to see that decisions are taken in accordance with those plans.

Scott Barrie: How do we ensure that the plans are kept up to date and that the system is robust, but at the same time ensure that local people are involved in the process, which could be regarded as inhibiting the continuous updating of the plans?

Jim Mackinnon: You are right. A tension arises when you try to keep things moving along briskly but, at the same time, try to ensure that people feel included and involved. In the consultation paper, we have made a number of proposals on how to avoid that tension. One proposal is to notify neighbours who could be affected by local plan proposals. We also want to take a more targeted approach to consultation. What is given to a statutory undertaker or to a body such as Scottish Water might be different from what is given to local communities. Some councils have responded in innovative ways to the challenge of community consultation—Highland Council has its planning for real exercise, for example. However, there is undoubtedly a tension between adopting a more inclusive approach and keeping documents up to date.

As I say, in the consultation paper we have raised the prospect of sanctions. However, it is a difficult issue because we could be penalising councils that are trying their best to perform well. It will be interesting to see the responses to the paper.

Donald Gorrie: Has consideration been given to treating the whole of central Scotland as a unit—that is, Edinburgh, Glasgow and all the bits in between, such as Lanarkshire and Falkirk? Does the Edinburgh city region touch the Glasgow city region, or is there a black hole in between?

11:45

Jim Mackinnon: I do not think that there is a black hole. Edinburgh and Glasgow are becoming increasingly linked together. You just have to drive between them at peak hour times and you can see the strong flows both ways. We have said that there is a need for Edinburgh and Glasgow to co-operate to present themselves as a single urban access in Scotland. We have not given vent to that through specific actions, because we have been talking about city region plans, but there is no doubt that some people feel that that would be a more appropriate way ahead.

Mary Scanlon (Highlands and Islands) (Con): In your presentation, you did not mention national parks, which are now planning authorities in their own right. My three questions all relate to national parks. First, what impact will the removal of strategic-level plans have on national parks? Secondly, Cairngorms national park has banned wind farms. Are you comfortable with a national park taking a stance that may be out of kilter with Scottish Executive policy? Thirdly, would the sanctions that apply to local government apply equally to a national park? Can you give me an idea of what those sanctions would be, bearing in mind the fact that Cairngorms national park has a budget of £3 million, in contrast to the multimillion pound budgets of local authorities?

Jim Mackinnon: On strategic-level plans in national parks, we have said that a national park plan will be drawn up. There is already provision for that in the legislation. Any park-wide planning issues can reasonably be incorporated in such a document. That is how we see the issue being dealt with.

I am afraid that I am not familiar with what Cairngorms national park has done on renewable energy, but it is for the park authority to decide in the first instance. Although it may have indicated a strong presumption against any wind farm development in the park, a developer might still want to submit an application, which may yet come before the Scottish ministers, so it would be inappropriate for me to comment.

On sanctions, we have suggested that if a council has failed to keep its plan up to date, ministers could direct that it should not take a planning fee, on the basis that it does not have an up-to-date development plan, or we could say that a development plan that is not up to date should be accorded less importance in a planning decision. We have to be careful, because some policies are timeless—for example, natural heritage policies and built heritage policies—whereas others, on land supply, have to be kept up to date.

It is difficult to generalise, but I have outlined some of the sanctions. We have talked about keeping local plans up to date and in the consciousness of the authority by making keeping up-to-date development plans a community planning indicator. We have to recognise that some local plans have fallen behind because of lengthy inquiries, which we are taking steps to

deal with, or because they are in the courts.

Mary Scanlon: Cairngorms national park has banned wind farms, but are you saying that the ban can be overturned by Scottish ministers?

Jim Mackinnon: It depends on the size of the wind farm. Those of more than 50MW would be dealt with under the Electricity Act 1989, whereas smaller developments would be dealt with by the relevant planning authority. Because there is a prohibition, I would expect the national park authority to refuse any application, but that does not stop someone submitting an application if they think that there is an opportunity there. That application may come to Scottish ministers, either under the Electricity Act 1989 or under the planning acts on appeal, so I cannot comment on the merits of a case. However, that is the route that would be followed.

Ms White: Thank you for your excellent presentation. I gleaned a lot of information from it. I hope that we can go through the process and get even more information.

You spoke about sanctions for councils and placing a statutory duty on public agencies to be involved in the creation and implementation of development and action plans. What benefits would that bring to agencies and to the general public? How will the development and action plans affect community planning? Will those tie in together or will they be separate?

Jim Mackinnon: We will deal with the statutory requirement on agencies. Some councils have argued that some agencies are unwilling to engage in the process. We want development plans to be at the heart of the system. If a site is allocated for development, there should be confidence that it can be serviced for water and drainage and that access will be fairly straightforward—for example, buses can get there. The aim is to get that level of engagement with and commitment to the development plan process.

We have heard about situations in which a site is identified for development in a local plan, the planning application comes in and things begin to fall apart. We want there to be a much higher level of commitment so that we know that the development plan matters, that it makes a difference and that it provides opportunity and certainty—not only for the developer but for local communities, who will know that the site will be developed. That is how we see the process working.

Sorry, what was your second question?

Ms White: How would the development plan tie in with community planning?

Jim Mackinnon: The community plan will set the general strategic vision for an area—often that is about service delivery and general aims and aspirations. The development plan should pick up the land-use consequences of the community plan. For example, if the community plan mentions a new health centre being built in a community, I would not view it as being the community plan's job to say that the centre will be on site A or site B, but the development plan should state that there is a requirement for the community planning process to identify a site for a new health centre in the community, take that as a given and use the local planning process to find a specific site.

Matters that come up in consultation on the development plan process should also be fed into the community planning process; the two processes have distinct roles, but there is some overlap.

Ms White: On community planning, you said that, if there is a housing development, there is a statutory duty on certain agencies. In the Glasgow area, we could not get housing built because basic electricity and water services could not be provided. Is that the type of thing that you mean when you say that there is a statutory duty? Is there a statutory duty to supply water and electricity if the need for such a supply has been recognised in the development plan and by the community planning process?

Jim Mackinnon: We are not saying that they have a statutory duty to provide a service, but they have a statutory duty to engage with the process and to say whether they can provide it. Sometimes it might be a requirement of a planning agreement on a specific site that the houses would be developed and that the developer would provide the drainage connection. It is difficult to generalise, but the aim is to ensure that people understand either that the site could get a water supply or could be drained easily and we can take that as a given, or that there is an issue about water and drainage and that Scottish Water might provide them or they might be funded through an agreement with the developer. The aim is to get that level of certainty into the process.

Elaine Smith (Coatbridge and Chryston) (Lab): I have a specific question, but first I want to ask a follow-up question on the issue that you have discussed with Sandra White. Will you consider planning gain to see whether it could be standardised and made easier for communities to get something out of developments, so that, if there is a big housing development, the community would be able to engage more easily with the process and get something back?

Jim Mackinnon: People feel that there have been a lot of planning consultations recently, but we are aware that one matter on which we have not done any formal consultation is the sensitive subject of planning agreements.

Planning agreements have changed quite a lot over the years. The legislation is quite old and is about regulating the use of land. The way in which such agreements used to work was that there would be, say, a planning application for housing in the countryside and it would be restricted for use by someone in agriculture or forestry, or a roundabout would have to be provided for a supermarket development. Our policy is that those things should be direct and proportionate.

The use of planning agreements has expanded in Scotland over the past few years, so there are now more than there have ever been, but they still affect a relatively small percentage of all applications. We have also seen an extension of their scope. They are no longer about only a roundabout for a supermarket development; they are about wider issues that could relate to community benefits.

For example, some councils in the north-east very clearly set out what they expect of developers. We want to encourage that process. Indeed, as Sandra White mentioned, the development plan plays a fundamental role in creating certainty in the infrastructure. It is important not just for development interests but for local communities to know what a developer who submits an application might be expected to provide in a particular area.

A colleague on secondment from Dundee City Council has carried out a lot of work on this matter and we are advancing our thinking on it. You are absolutely right to say that planning gain is an important part of the planning reform agenda. However, we have not consulted on it, because people are beginning to suffer from consultation fatigue on this matter.

The Convener: I have a follow-up question about planning gain. Local communities are cynical about the whole process; after all, they are promised the earth until planning permission is given, and then nothing transpires.

I asked earlier about joined-up thinking. I know of one particular Scottish Executive department that was seeking a planning gain. How do you prevent people going into silos when that happens and ensure that they take into account how a development can generally benefit a community? After all, the benefits that a development might have for an individual department might not necessarily be in tune with community regeneration and so on. How do you bring such an approach out into the open?

Jim Mackinnon: I am not particularly sure what you have in mind, convener. When Scottish ministers exercise their planning role, they do not conclude agreements with developers.

The Convener: I will give you an example. Where a development requires a change to the road network—which is the Executive's responsibility—how do you get the department with responsibility for roads to consider other community interests beyond what happens to the road? I am sure that the same would hold for any department that is delivering a national service.

Jim Mackinnon: If someone submitted an application that involved consultation with those who were responsible for the trunk road network, those people would be asked for their views in the usual way. It might well be that they would want, for example, improvements to a junction. That could be dealt with in various ways by, for example, a planning agreement or setting particular conditions.

It would then be up to Glasgow City Council, North Lanarkshire Council or whatever council to decide the best package of measures and specify that in a planning agreement. Any council that considers an individual development must examine the matter in the round. For example, it might think about whether access should be funded through trunk roads, whether they want certain aspects related to education to be taken into account in the development and so on.

That said, our work and research have highlighted a lack of transparency in the process and a lack of clarity about what happens to the financial or other benefits that might accrue. I know that some English councils indicate on their websites that, for example, they got £100,000 from a development and then show how that money was used. We are actively considering taking such an approach in the forthcoming planning bill to ensure a degree of transparency and accountability about what happens to the community benefits. There should be no suspicion that money simply went into coffers and disappeared. If one community experiences negative impacts from a particular development and a planning agreement is concluded to mitigate those effects, it is important to give guarantees and assurances that the money is being spent locally.

Elaine Smith: Having worked as a clerk on a planning committee, I agree with the convener's comments about how we find out whether benefits are being delivered. For example, a house builder might agree to include a tennis court in a particular development; however, four years down the line, houses might suddenly appear on that land because they bring in more profit.

I do not know whether it is appropriate for you to answer this question, but I understand that there has been a problem with private finance initiative/public-private partnership projects and have received some conflicting information from the minister and the department on a particular

matter. It appears that councils are not giving the Executive any notice to develop because the private profiteer company is responsible for the development in question. As a result, even though council land or a council-run school might be involved, the matter is being dealt with in the local planning process.

To give an example, in Dunbeth park in Coatbridge, a plan to build a football pitch with floodlights in the park is upsetting local people. I understand that the proposal did not come to the Scottish Executive because the private part of the contract will develop it. Going back to what the convener was saying about joined-up thinking, it seems to me that there is a national issue. Given the Executive's desire to tackle obesity, it strikes me that green spaces in towns should not be being developed in that fashion. I have no objection to the creation of the proposed facility, but I do not think that it should be built on an existing green space. Will such issues be considered as part of the process?

12:00

Jim Mackinnon: There are two routes by which a local authority can advance a major development. One is what is called the notice of intention to develop. That is the traditional route, and you are correct to note that we now have PFIs and PPPs. In that circumstance, the local authority is the developer and must notify the Scottish Executive if there is a local authority interest, for example, if the local authority is the landowner or has a financial interest. We have had a significant number of applications notified to us on that ground. One of the most common cases involves an application for a development—which could be for housing, schools or whatever—in an area that a local plan has identified for open space. Over the years, we have called in a number of such applications—in fact, it is probably the largest category of applications that we have called in. We take such cases seriously because we represent the Scottish ministers' planning interest and our job relates to the proper planning of an area, which should not be influenced by financial considerations.

Elaine Smith: Is there a loophole whereby a PPP project does not have to be notified to the Scottish Executive?

Jim Mackinnon: That is for the local authority to decide. We do not have much information before the local authority notifies us. We can issue a direction requiring councils to notify us about something that is going on, but we need to know about it in the first case. We have done that on occasion.

There is quite strong national policy in place in relation to open space and we have committed to reviewing the situation again over the next couple of years. We have issued advice on the need for open-space audits to consider not only the quantity of open space but also the quality.

On your point about tennis courts, the quality of open space management and maintenance is quite a big issue in relation to modern private housing developments.

Cathie Craigie: Whether we are professional planners, applicants, community groups, private sector representatives or whatever, we are all agreed that the planning system is outdated and needs to be modernised. Most people have welcomed the opportunity to take part in the Executive's consultation exercise. Even before people start to examine fully the various issues that are involved, agreement exists about the fact that, at the early stages of the process, we need to have local and regional plans that people feel they have some ownership of and can sign up to.

Getting away from big developers, who have always got involved in the local planning process, how have you ensured that local communities and local business communities engage in the consultation so that their views can shape the legislation?

Jim Mackinnon: That is quite difficult, frankly. When we wrote "Getting Involved in Planning", we considered various ways of securing the involvement of people other than the usual suspects in the public and private sectors. We wanted to achieve the Heineken effect and reach the parts that we do not normally reach.

We did gap research, and had people considering the issues and finding out what local communities thought about them. We have had quite a lot of engagement as part of the modernisation agenda. The minister will be engaging with the business community as well as environmental groups and community groups to find out what they think about issues such as the wider right of appeal in planning. We have undertaken quite a lot of speaking engagements. The information is available electronically and it is widely known that a fundamental debate is taking place at the moment on the modernisation of the planning system. However, any ideas that the committee has about engaging more people in the process would be welcome.

Mary Scanlon: I move on to third-party rights of appeal. Having already conducted a consultation on public involvement in planning, why has the Executive decided to hold a separate consultation on the third-party right of appeal?

Jim Mackinnon: When we consulted on "Getting Involved in Planning", ministers took the view that they did not want to debate the third-

party right of appeal. However, in the responses to the consultation, a significant number of people said that they thought that there was pressure for it. Ministers took the view that the issue should be debated because it is important to debate the issue before there is a planning bill. It is a complex subject; the principle is quite easy to understand but it raises all sorts of issues about the scope of an appeal and the resource implications. There was a feeling that things have moved on and that we need to have a proper debate about the issue before we introduce a planning bill.

Mary Scanlon: Most of the debate seems to be taking place around the criteria on which the third-party right of appeal would be based and that is obviously included in the consultation paper. However, I am not clear about something. In your opening statement, you talked about people whose lives are affected by a planning application. Will only those people have a third-party right of appeal? Who will be eligible?

Jim Mackinnon: As I say, the consultation is about whether there will be a third-party right of appeal and not about how it would work. If the decision is made to introduce a wider right of appeal in planning, there will have to be a decision about who should have that right. When we have talked about a new right of appeal, we have talked about an objector, because it is difficult to define in law who is affected by a planning application. For example, it could be that a development involves discharging effluent to a river, so the people who are affected might not be those who live immediately adjacent to the particular facility; it might be people who live five, 10 or 15 miles down the road.

We want to use the consultation paper to flag up those issues in the same way as Mary Scanlon is asking pertinent questions about the e-planning regulations. If we are to go down that route, we have to get the definitions absolutely right, so that we are clear about the implications.

In some countries, such as Ireland, a person has to have objected before they can lodge an appeal. That has meant that people from outwith Ireland could lodge an appeal; concerns have been raised about that. Equally, in other countries, the definition of who can appeal is much narrower; the property of the person who is appealing has to be directly affected.

I do not have a direct answer to the question of who will be eligible. The consultation is about whether the third-party right of appeal will be introduced. If it is, we will have to be clear about who would have that right.

Mary Scanlon: I have one point to give you an idea of where I am coming from. I am an MSP for the Highlands and Islands. The funicular railway in the Cairngorms was delayed for many years. I cannot remember the figures offhand but approximately 90 per cent of those who opposed it lived well outside the Cairngorms and the Highlands. In fact, they came from many places in the world. Recently, I received objections to the planning application for the centre in Glencoe from climbers from all over the world.

I want to be clear about this issue. Local communities might be in favour of developments such as the funicular railway, but they might find that a development is held up because of objections from people who visit the locality and live in many parts of the world. It would be helpful to know who could object and on what grounds in the Highlands and Islands.

Jim Mackinnon: You are absolutely right to raise that point, which is an example of the complexity of the issues. Just as objections might come from outwith the area, there are planning application cases on which communities are split—there is a volume of opinion for a development and one against it.

Mary Scanlon: Absolutely.

Jim Mackinnon: There are many examples of that. All that the consultation paper is saying is that if we go down the route of having a wider right of appeal, we will have to address that issue. If we enshrine such a right in legislation, we will have to be clear about the implications.

Mary Scanlon: It is very difficult.

Patrick Harvie: I want to pick up on your comments about the recent media report that ministers had cooled on the TPRA and ask you to expand on that in light of your comments about involving people in the consultation. I feel quite strongly that the absence of a TPRA makes people feel excluded from the planning system and that kind of media report is likely to deepen that pre-existing feeling of exclusion from the process. I have already taken phone calls from people who were planning to respond to the consultation and are now asking what the point is and why they should bother. I am obviously trying to persuade them that it is still worth their while to make that effort. Have there been discussions in the Executive about how to counter that sort of media report, if indeed it is completely unfounded?

Jim Mackinnon: All that I can say is that we have taken lots of telephone calls about that as well. I reiterate what Margaret Curran said on Monday. She stated categorically that no decision has been made on the third-party right of appeal. The consultation was launched on 1 April and it continues until the end of July.

Patrick Harvie: Have there been no discussions about how to promote that, now that there has

been some controversy?

Jim Mackinnon: Some parliamentary questions will be asked tomorrow on the issue.

Ms White: I take on board what the officials say about the information, which was obviously taken in good faith by the media. I lodged my bill for third-party right of appeal simply because of the 2003 planning consultation. I am sure that you can answer for yourself, but the public out there obviously want some form of appeal and I hope that what we have seen is simply a blip in the system and will not carry on.

There have been media reports about big business developers and environmentalists battling it out. Although they seem to make the news, the people who are most affected are those who have to live with developments. If there was a third-party right of appeal or a widening of the appeal, how would you be able to reconcile the big businesses' concerns and the aspects of the process that concern the environmentalists? Do you envisage the consultation process going some way towards doing that?

Jim Mackinnon: We would like a lot of those tensions to be resolved through the development plan process and we want clear policies to be set out so that people can have confidence that an outcome will be set out in the local plan. That is critical. The trouble with planning is that it is where economic, social and environmental agendas all come together, and that can present people with difficult decisions. It is nice to get win-win situations, but that is not always possible and a decision has to be made about what is most important in any given situation.

Our aspiration is certainly to try to head off the problems at the pass, so that we have genuine community engagement and business engagement in the planning process, and so that a development plan, as a statutory document, is in place and decisions are taken in line with that plan. That is our aspiration, but there will always be specific applications and developments that people are not terribly comfortable with, understandably.

Donald Gorrie: There is widespread support for the aims of speeding up the planning process and making it more certain. I think that many developers would prefer to know fairly quickly that they were on a loser rather than letting things drift on. Is it your intention to try to achieve the objectives of speeding up and making more certain the planning system? Without prejudging whether it will happen, can you say whether it is possible to incorporate some form of third-party right of appeal?

Jim Mackinnon: The aim is certainly to speed up the planning system. I said that local plans are out of date; some local plans are taking five, six or seven years to produce, and people may have forgotten why the plan was produced in the first place.

On wider rights of appeal, I can only reiterate the point that the matter is out to consultation. The relationship between such rights and the local plan is obviously an issue on which ministers will need to come to a view. At this point, it is quite difficult to say much beyond that.

12:15

Donald Gorrie: Is the choice between, on the one hand, speeding up the system and making decisions more certain and, on the other, having third-party rights of appeal? Might it be possible to merge those aims?

Jim Mackinnon: I think that it is possible to speed up the system and have more effective community engagement.

Cathie Craigie: I strongly believe that local plans should be developed by local people and that they should have the support of the local community. If things worked properly, that is how local plans would operate. The proposal to set a timeframe within which local authorities will have to update their plans so that plans are regularly revised can only be beneficial.

Do the consultation papers include the option of providing for no right of appeal against a local authority decision to refuse a planning application on the basis that it conflicts with a local plan that was supported by the community and adopted by the local authority? Although some might think that a backward step, I strongly believe in putting more emphasis on local plans and in giving more power to local communities by allowing their locally elected representatives to take decisions.

If we introduce third-party rights of appeal, we might as well do away with local planning departments and let the Scottish Executive Development Department deal with all applications. Rather than clog up the system with third-party right of appeals, we need to ensure that we have the right local plans at the very beginning with the support of the local community. Does the consultation include scope to provide for a mechanism that would allow rights of appeal to ministers to be withdrawn?

Jim Mackinnon: I share entirely the aspiration that local plans should be supported by the local community, be kept up to date and have a real impact on decision making.

When I outlined the options for a wider right of appeal in planning, I mentioned the potential for a radical overhaul of the appeals system. One proposed option is that if we treated first-party

appeals—namely, appeals from developers—in the same way as appeals from third parties, all appeals would need to go through a screening process to determine whether they could go forward to inquiry reporters. That might catch appeals for proposals that flew in the face of an up-to-date local plan. We included that option as an attempt to respond to people's concern about what was seen to be a fundamental imbalance in the system. We thought that it might be worth exploring that option further, which is why we included it in the consultation paper.

Cathie Craigie: If it is appropriate to do so, can you give us an indication of what might be in the planning bill? When is the bill expected to be introduced and when will we need to clear a space in our diaries to deal with it?

Jim Mackinnon: The "Options for Change" paper that we published last September brought together many of our existing commitments, such as our proposals for city region plans and for many other areas in which it is possible that legislation might be introduced, such as for the planning agreements that Elaine Smith mentioned. We are beginning to put together the whole package of reform by identifying what needs to be in the bill, what should go in secondary legislation—such as the permitted development orders that Sandra White mentioned, which will also have consequences—and what is for guidance and advice. Some of our objectives may not require legislation, but in other cases legislation is fundamental.

Our intention is to introduce a bill at some time in the current parliamentary session, subject to parliamentary time. That is the agenda that we are working to at the moment.

The Convener: With that, I thank the witnesses for their attendance. We have had a useful first stab at what is a very big issue. We appreciate the time that you have given in delivering the presentation and in entering a dialogue with the committee.

12:19

Meeting suspended.

12:24

On resuming—

Petitions

Landfill Sites (PE541 and PE543)

The Convener: Item 4 is petitions. I welcome Mark Ruskell, who will attend for the item. We will deal first with PE541 and PE543. Do members have any comments?

Mary Scanlon: I have a suggestion. The paper on the petitions says that petition PE541 asks us to investigate

"the impact of landfill sites on … health and environment … the rationale behind the proposed expansion of landfill sites … given the … EU landfill directives … more sustainable solutions to waste management and … the planning process".

However, this committee does not deal with health or the environment. I noted somewhere that the Health Committee will appoint a reporter. I do not see in our papers a report from the Health Committee. I suggest that the clerks liaise with the other committees that have responsibility for the matters within the petitions, and put the information from other committees into a paper that we can agree on.

The Convener: The Health Committee said that if we wish to conduct an inquiry, it will give us a reporter. It has not expressed a view on whether we should have an inquiry or on whether it would do anything to assist us, other than to appoint a reporter. There is no indication from the Health Committee that it is prioritising the matter in its work load.

Mary Scanlon: I am just not minded to dismiss the petitions or refer them on. We need to collate the information. There is so much of what people might call scaremongering, nimbyism or general concern about the effect of landfill sites. We have a responsibility to review the evidence and bring together information on the four strands that we are asked to consider; otherwise I see no basis for referring the petition on.

Cathie Craigie: I understand the strong feelings that are held by those who live in communities that are close to landfill sites. I have experience of such a situation in my constituency, where people in one small village have lived with landfill sites on their doorstep for years as a result of the quarrying that had gone on around them. I know what it is like and I know people's concerns. Whether the health issues are real or perceived, the situation is a worry for people who live near landfill sites.

We should pay heed to landfill sites when we

examine the forthcoming planning bill. Just because there is a hole in the ground that has been quarried over a period of time, it is unacceptable for us to expect that that hole has to be filled in and that the community that happens to live close the hole has to live with that. We have to put in place a mechanism to protect such communities. We should examine the matter closely when we deal with future planning legislation.

As I understand it, planning processes have been adhered to in the two areas referred to in petitions PE541 and PE543, but that is not to say that the processes are right for the times in which we live.

Patrick Harvie: I seek advice on dealing with a petition through an inquiry. If we agreed to hold an inquiry and the Health Committee appointed a reporter, would that enable us to address the health questions? If so, I would be keen to argue that we should do that. To argue that we should ignore the issue because it is low down on another committee's agenda could be seen as a double insult to the people who lodged the petitions.

The Convener: I was not arguing that. We have been asked to consider the planning elements of the petitions. If an inquiry were to be held, we would need to do an awful lot more than simply have a reporter from the Health Committee come along, because we would be looking at the planning bits. It is for the Health Committee to determine what priority it gives to the health aspects. I am not dismissing anybody's concerns. We could not include the health issues in an inquiry; we could do that only in liaison with the Health Committee.

Patrick Harvie: What is the function of the Health Committee's reporter participating in our inquiry?

The Convener: Perhaps in our discussion of the planning issues we would flag up health issues that the reporter would report back on.

12:30

Scott Barrie: I was going to make that point. I presume that the Health Committee has decided that, if this committee considers the aspects of the petition that relate to this committee, the reporter will report back to the Health Committee on any concerns for it. However, the letter from the convener of the Health Committee does not indicate whether, if we decided to purse the matter, it would take up the health issues. I do not see the point of the Health Committee appointing a reporter only to report back to it what has been said at this committee. If we decide to have an inquiry, the situation will be complex because the Environment and Rural Development Committee has already considered the petitions and concluded its consideration of them because it believes that it has examined the issues in its national waste plan inquiry.

Cathie Craigie is right to say that, rather than keep the petitions live for the sake of it because they contain significant issues, perhaps the best way to deal with the matter is to ensure that we consider the issues thoroughly when we examine the changes that are likely to be introduced on planning regulation. She is right to say that the petitions have shown up weaknesses in the current planning regime; the decisions that have been made are in no way wrong in law, but perhaps the law has not kept up with current practice. We should consider the issues that petitions PE541 and PE543 flag up when we consider the planning legislation rather than have a specific inquiry on them.

Donald Gorrie: My proposal is on the same lines. Provided that consideration of the planning bill is months rather than years ahead and provided that we can give a guarantee that the people involved in those two communities will be invited to come to give evidence when we carry out pre-legislative scrutiny of the planning bill, we should pursue the issues that have been raised then. Although that involves a delay, the petitioners will get a better kick at the ball than they would if we rushed through an inquiry, which might not be terribly satisfactory.

The Convener: The message that the committee wants to give is that we take the issue seriously and understand the concerns of local communities. We can best help them by informing ourselves of their views when we deal with the planning legislation. If, by the time of our away day, we are getting signals that the planning bill will not be before us until much later, we could put one of the suggested courses of action into the forward plan for the following year. At this stage we can give a commitment not to let the issue lie. Our preferred option is to address the issues in our consideration of the planning bill but, if we cannot do that, we can explore our options when we come back after the summer recess.

I note that, although the Environment and Rural Development Committee has concluded its consideration of the petitions, it has said that it will continue to consider the issues raised in them as appropriate. Therefore, that committee has not dismissed the issues raised in the petitions; it has also woven them into its work. Is that an acceptable approach?

Mary Scanlon: Yes.

Scott Barrie's point about the petitions is relevant. As he said, we can of course take on board the planning issues that they raise in our

scrutiny of the forthcoming planning bill and we would be minded to do that. We note from the Environment and Rural Development Committee that it is keeping a watchful eye on the issues raised that relate to it, so the only outstanding issue—I do not know whose responsibility it is—is the health concerns.

The Convener: We have drawn those concerns to the attention of the Health Committee and we can do so again.

We are agreeing that we will not consider the petitions further at this stage but that, on the issues highlighted in the petition that impact on planning, we will ensure that the petitioners have a role in our pre-legislative scrutiny of the planning bill. However, if the bill is not timely, we will come back to the issue at our away day. It would also be helpful, as the clerk has suggested, for a note to be prepared that outlines for the committee all the issues that have come through in petitions that we have said we will consider when the planning bill comes to us. That will concentrate our minds and ensure that we consider the issues at that time and that we are making a real commitment to the petitioners. Is that acceptable?

Members *indicated agreement.*

Terrestrial Trunked Radio Communication Masts (PE650)

TETRA Communications System (Health Aspects) (PE728)

The Convener: I should mention that a letter from the Deputy Minister for Communities was received yesterday and has been circulated to members. It sets out the Executive's response to a letter that was sent to the Minister for Communities by the Transport and Environment Committee in March 2003, a copy of which is attached, seeking comments on work carried out earlier that year by that committee in relation to telecommunications development. The exchange is relevant to our discussions on the terrestrial trunked radio petitions because it indicates that national planning policy guideline 19, on radio telecommunications, which also applies to TETRA masts, reflects the Transport and Environment Committee's concern that local authority moratoria on applications for mast development could prevent the optimum siting and design solutions from being achieved. The letter from the deputy minister points out that legitimate public concerns about the siting and design of masts are material planning considerations that can be taken into account when determining applications. I hope that that is of some help to members.

Mary Scanlon: I read the *Official Report* of Mark Ruskell's members' business debate on this matter and, if there is one thing that is conclusive, it is that evidence about the health risks is inconclusive. Iain Smith, for example, said that we should stick to the facts and the evidence rather than scaremongering. It was a responsible and well-balanced debate but, at the end of the day, we still do not have the facts that would enable us to say that the public should not worry.

This morning, we received a letter on behalf of people in Fife and Comrie that talks about

"reports from Europe (France and Spain) of multiple cases of childhood cancers including leukaemias where masts have been placed on or very close to school premises."

The police are conducting research and have some baseline data on the effect of TETRA equipment on policemen—according to the Association of Chief Police Officers in Scotland, the research has been conducted over 10 years and, according to the Scottish Police Federation, it has been conducted over 15 years. However, no research appears to have been done on the effect of the masts. It is impossible to say yes or no when people ask whether the masts are dangerous because the research is inconclusive, as the minister has confirmed.

This is a health matter. I appreciate the demands on the time of the Health Committee, but perhaps we could ask SPICe to undertake a review of the available information or ask the Medical Research Council for an update on current research. That would ensure that we were all fully informed. I am simply not in a position to know whether the letter that we received on behalf of the Comrie and Fife residents is scaremongering or not.

Patrick Harvie: The central point is whether, while we are waiting for that information, the masts can continue to be erected—I understand that there are still some in the pipeline. I would like us to take any action possible to support the petitioners. If we know that some research is due to be published soon, it seems reasonable that there should be a postponement of any pending applications.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Clearly, this issue relates to the planning system as the planning system is approving TETRA masts across Scotland. However, the planning system relies almost exclusively on the guidelines that have been established by the National Radiological Protection Board, which cover the health issues that Mary Scanlon was talking about. The concern that the petitioners have with the NRPB guidelines is that those guidelines do not acknowledge that TETRA masts pulse, despite the fact that scientists have recorded them pulsing. Further, despite the fact that there have been more studies that show that TETRA masts could have health effects than there

have been studies that do not, the guidelines do not acknowledge that there could be health effects.

The guidelines do not deal with pulsing, which is the key issue with TETRA. They deal only with the heating effects. If the NRPB guidelines are the basis on which 700 TETRA masts are being approved throughout Scotland, there is a problem and a committee of the Parliament has to unpack the issue and the NRPB guidelines.

There is a sense of urgency because the first police area in Scotland to use the system will start to do so in July, and the other areas will follow shortly after that. The issue needs to be unpacked.

Elaine Smith: I take seriously what Mark Ruskell said and I agree with what Patrick Harvie said earlier. The briefing says that the Scottish Police Federation's conclusion is that

"no one can categorically state whether the TETRA system is safe or unsafe".

We should be adopting the precautionary principle at this stage. In the meantime, I would certainly not like to see the masts being put next to schools, in residential areas or near where children are playing. We should be looking at the Executive's research report but, if the TETRA masts are being rolled out within months, that makes the situation difficult because the programme will have started.

At this stage, the precautionary principle would lead me to say that we should be urging the Executive to have a moratorium at least until its report is published and we can have a look at it.

Donald Gorrie: We obviously have to pay attention to the Executive's research, which comes out on the unhelpful date of 2 July.

I am not clear what our powers are. We are not a planning authority so if, for the sake of argument, we passed a motion today that no more masts should be built until everything was sorted out, what would happen, if anything? I do not think that anything would happen. I do not think that the Executive can stop councils from giving planning permission. I would like to have some information about the planning side of the problem.

This is an important issue and we should run with it. The first thing that will happen is that the Executive's report will come out on 2 July and, if we are unhappy with that when Parliament resumes in the autumn and, as Mark Ruskell has said, the Executive has not paid attention to some of the main issues, we can pursue that then. However, there is no point in rushing out to commission lots of research if the Executive has been researching at least some aspects of the issue.

The Convener: We are saying that we want planning authority to be refused while the masts are investigated further, but we do not have the authority to do that. It would also be misleading for us to say that if we held an inquiry, that would be the effect, because it would not. Given that, at best, the jury is out on the evidence, I do not think that it would be appropriate for the committee to make that decision at the moment without having more information. It is the same old argument about planning authorities not being able to stop telecommunications masts from being put up in response to perceived fears about health because that issue is dealt with elsewhere. Planning authorities can deal only with the planning criteria.

The evidence comes out on 2 July. Mary Scanlon has talked about gathering any other evidence that might be available and we could reflect on that at our away day. That might be a reasonable idea. Planning facilitates policy views that are taken elsewhere and I think that that is why we are having difficulty with this issue because the health and other issues have to be addressed elsewhere.

That would not stop those who feel strongly about those issues from continuing to push them in any way that they can. Would that be acceptable?

Scott Barrie: We cannot really do anything else, given that the report will be published very soon. I am not usually minded to keep continuing petitions, because I do not think that it is fair to the petitioners, who might think that we are discussing a petition and keeping it live because we do not want to do anything about it or do not know what to do. In this case, however, I do not think that we have any other choice, given the imminence of the report. If we continue our consideration until our first or second meeting back after the summer, that will be a fair way of proceeding, given that we are not in possession of the full facts and given that a report will be published in the next couple of weeks.

12:45

Mary Scanlon: Scott Barrie has just said what I was going to say. We cannot make a decision because we do not have enough evidence. We are getting evidence on 2 July and the only decision that we can make, as responsible parliamentarians, is to examine that information and make the matter an agenda item at our away day.

The Convener: However, it would be reasonable to alert the petitioners to the fact that, if health issues emerge from the evidence, they cannot be dealt with by this committee looking at the planning aspects of the matter. That dialogue would have to be opened up again. However, we

should, as a minimum, make a commitment to examine the evidence when we are preparing our forward work plan at our away day.

Mary Scanlon: That is something that the petitioners could reflect on. The previous petition on landfill had four elements to it, which covered the remits of four committees. That can raise difficulties. These petitions on TETRA masts have two elements—health and environment. As we do not control the Health Committee, perhaps future petitioners should submit separate petitions relating to specific aspects of their concern.

The Convener: That is a reasonable point to make. We could say that those are issues for another committee, but it is entirely a matter for that committee to decide its own priorities. Although petitions are an important part of the process, it is legitimate that the committee should decide itself what it is going to look at. I would contend that this committee has to steer a course according to what we consider to be the big issues. We should remain flexible enough to take on petitions at certain times, but we should not always feel obliged to move with the agenda of the petitioners as against the other agendas that the committee has developed. It is always a difficult balance to strike, but it is still reasonable that we should try to do that.

Patrick Harvie: I understand the difficulties that members have in identifying specific actions that we can take that will be effective. I would like to suggest that, at the minimum, we should write to the Executive and explain our concerns about being unable to take a position on the petition because of the lack of evidence and the imminence of evidence becoming available. We should ask the Executive to consider what actions it could take to achieve a postponement until evidence is available to judge those questions.

The Convener: To me, that would be going a step further than has been suggested. We could not make that judgment until we had seen the evidence.

Patrick Harvie: That is the problem.

The Convener: Even if the evidence were with us today, we would not be able to consider the matter seriously and make a decision about it today. We would need to be a bit more thorough than that. If the evidence had been published yesterday rather than being published on 2 July, we would not be making a decision today anyway, although we might have a bit more of a focus about how to take the petition forward.

It is reasonable to suggest that we should await the publication of the Executive's research and that we should make a commitment to consider the issue in discussions on our work programme at the away day—whether we decide to reflect our views back to the Health Committee or to do something separately from that. Is that agreed?

Members *indicated agreement*.

Away Day

12:48

The Convener: Just to confuse members, we now move to agenda item 6, which we shall deal with before we tackle item 5, which will be taken in private.

Item 6 concerns our away day, and members have a paper outlining the options. First of all, is there general agreement that we should have an away day?

Members *indicated agreement*.

The Convener: Do members agree with the general options for how the day is to be used?

Members *indicated agreement*.

The Convener: I think that issues concerning location and timing could usefully be left to e-mail discussion with the clerks. Is that agreed?

Members *indicated agreement*.

12:49

Meeting continued in private until 13:05.

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