

COMMUNITIES COMMITTEE

Wednesday 15 September 2004

Session 2

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COMMUNITIES COMMITTEE 24th 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)
*Mr John Home Robertson (East Lothian) (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

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee 6

Scottish Parliament

Communities Committee

Wednesday 15 September 2004

[THE CONVENER *opened the meeting at 10:03*]

Interests

The Convener (Johann Lamont): Good morning and welcome to the first meeting of the Communities Committee in our new home and in this wonderful committee room. We have received apologies from Stewart Stevenson, who is attending the Edinburgh Tram (Line Two) Bill Committee.

The first item on the agenda is the declaration of interests. I welcome John Home Robertson, who has joined our committee. I record the committee's thanks to Elaine Smith, who has left, for all the work that she did during her time with us. I hope that John will enjoy his time with us and I invite him to make a declaration of interests.

Mr John Home Robertson (East Lothian) (Lab): As you know, I come to this committee from the convenership of the Holyrood progress group, which had something to do with this committee room, to which you have just referred. I hope that this committee will not be quite as difficult; I look forward to its work.

I refer colleagues to my entry in the register of members' interests, which includes my being a dormant partner in a family farming business that includes let houses. I am also a trustee of the East Lothian Community Development Trust, ex officio as the MSP for East Lothian. That trust owns swimming pools and sports and community facilities in my constituency. Finally, I am a trustee of the Paxton Trust, which owns and manages heritage property at Paxton in Berwickshire. Both of those trusts are Scottish charities. As far as I know, those are the only interests that I should draw to the attention of committee colleagues.

Items in Private

10:05

The Convener: We have been asked to consider whether to discuss agenda items 4 and 5 in private. Agenda item 4 includes the timetable for the pre-legislative meeting on the draft Charities and Trustee Investment (Scotland) Bill, and it also includes lists of potential invitees for the committee's consideration. Agenda item 5 is the committee's work programme, which has been amended following our discussions at the committee away day. Do members agree to take those items in private?

Members *indicated agreement.*

Antisocial Behaviour etc (Scotland) Act 2004 (Draft Guidance)

10:06

The Convener: Members have all received copies of the draft guidance that has been published by the Executive on parts 1 to 6 of the Antisocial Behaviour etc (Scotland) Act 2004. The paper relates to commitments that were given by the Deputy Minister for Communities at stages 2 and 3 of the bill's consideration. Areas where members may want to consider whether the guidance is sufficient are highlighted in the paper, and a more detailed table is included in the annex.

We have been asked to consider different guidance, so I think that it would be useful to go through the paper section by section. If members have specific points that they want to raise, they can do so, and we shall see whether there are specific points that we want to pursue with the minister. I do not think that the timescale allows us to do anything other than that. The consultation ends tomorrow, so a formal response is just not possible, but it will be possible to have a dialogue with the minister.

I shall take the paper section by section. Are there any comments on the background? I would not have thought so. Are there any comments on the draft guidance on antisocial behaviour strategies?

Donald Gorrie (Central Scotland) (LD): I am not satisfied that the guidance sufficiently meets the points that were made by the committee about ensuring that councils consult and involve all the right people in creating communities that discourage antisocial behaviour. On page 13 of the guidance, in paragraph 64, there is a definition of prevention that does not give sufficient emphasis to good youth work and community activity. The guidance should be strengthened in that respect.

The Convener: All that we can do at this stage is note members' comments. We shall see whether we can come to conclusions at the end of the paper. It may be that some members feel that the draft guidance covers our concerns sufficiently, and we do not have the time or energy to negotiate through that. Members will see that certain points have been flagged up.

Donald Gorrie: There is one other point that I would like to raise. On page 15 of the paper on antisocial behaviour strategies, paragraph 75 is on resources and talks about local authorities and their partners deciding on the appropriate level of resources, but I think that it should also say that

the Executive must consider the appropriate level of national resources. Tackling antisocial behaviour is a priority for the Executive, so it must give priority to it in money. There are various funds available, but the duty of the national Government in respect of resources should also be mentioned.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): That part of the guidance is about antisocial behaviour strategies and local authorities are responsible for co-ordinating and producing strategies. It is the Executive's guidance on what local authorities should take into account when they do that, so I do not know that that part of the guidance needs to be any stronger.

The Convener: It may be that, in scrutinising the budget, we would need to look at what elements were being given to local authorities for dealing with such issues.

Donald Gorrie: If local authorities have to divide up an inadequate cake as well as they can, the slices of that cake will be inadequate, even if the authorities divide it up wisely. The Executive should accept that it has to practise what it preaches, so it must provide a sensible budget for the local authorities.

Cathie Craigie: That is the point that the convener made. It would be for us to scrutinise the budget to see how much the Executive was laying aside for dealing with antisocial behaviour. If we set that out in guidance, we would basically be telling local authorities what they should do and how they should spend their money. I do not think that any of us would want to do that. The matter is about sharing power and devolving power down to local authorities. People in local authorities will develop the strategy and they have to balance their books and decide how much is required in each of their areas.

Donald Gorrie: I have made my point. I think that Cathie Craigie has got the wrong angle.

Ms Sandra White (Glasgow) (SNP): It might be helpful to Donald Gorrie if I explain what I take from the paper. I supported Donald Gorrie's amendments during the passage of the bill. As I understood the situation, the planning strategies were to be expanded not only to include speaking to communities about how the strategy will work, but to cover situations in which antisocial behaviour arises or is likely to arise, so that the issue could be raised at community meetings and changes could be made. That is what I took out of the draft guidance.

Far be it from me to stick up for the Executive, but that is what I took from paragraph 51 in particular, which expands the point that we will be speaking to communities during the strategy planning. Any worries or fears that those communities have can be raised then so that the

police, the community and the young people can be involved from the beginning, rather than just react to situations. That is what I understood from the strategy.

The Convener: Okay. We will move on to the draft guidance on antisocial behaviour orders. I flag up the issue—I am sure that we discussed this in committee—of ensuring that the hearings system is integrated. Some feeling has been expressed that the guidance puts one before the other and that it is not possible to do something until someone has been put through the whole system, whereas it might be possible to use an antisocial behaviour order to get someone to engage with the hearings system. The two could be used together. We might want to flag up the fact that ASBOs give the opportunity to move speedily to calm things down, but if too many caveats are inserted, the ASBO does not benefit anyone, the behaviour continues and the situation does not calm down. We might deal with that point.

The committee was always comfortable with the integration of the hearings system into the process, but if we put in unnecessary blocks by insisting that every case go through the whole hearings system before an ASBO can be sought, we might lose one of the benefits of ASBOs.

We move on to the draft guidance on dispersal of groups.

Donald Gorrie: Before I read the clerk's note, I read the consultative document. Paragraph 3.4, which is about consultations, says that

"This in no way precludes discussions at local level with elected representatives,"

and so on. Beside that sentence, I have written the word "feeble" because that paragraph should say much more clearly that there must be proper consultation of communities at the earliest possible stage to try to sort things out before the police have to intervene. That paragraph needs to be strengthened.

The Convener: I want to flag up paragraph 2.12, which defines serious antisocial behaviour. Such behaviour would have to fit a series of criteria; it would have to be significant, persistent and serious. I agree that in passing the bill, we agreed that the behaviour should be serious. However, serious behaviour is defined as that which causes

"a possible danger or risk to members of the public arising from the antisocial behaviour in an area. Minor antisocial behaviour that causes only irritation would not therefore be of sufficient gravity".

I can think of serious antisocial behaviour where the people who are at risk are those who are involved in the disorder, and there is a major

impact on the lives of the people around the group. Disorder going on outside the door might not put a child at risk, but it would prevent them from going out to play. It might mean that people's cars are getting smashed up so that they have to park them half a mile away from their homes, and that they are staying in their homes rather than going about their business. The test of serious antisocial behaviour in the draft guidance misunderstands how continuous and persistent antisocial behaviour operates. We should bear it in mind that we understood that antisocial behaviour can be an accumulation of behaviours that do not separately trigger charges by the police. I am concerned that we will include in the definition of serious behaviour a test that is so hard to meet that it disregards all sorts of behaviour that we are trying to label as serious but that the police currently find difficult to manage.

Donald Gorrie: I agree about paragraph 2.12. The first sentence is on one extreme, the second is on another and there is a lot of ground in between the two.

The people who will have to make the judgments should be given more guidance about the degree of antisocial behaviour—or the degree of trouble that such behaviour causes—that would be the trigger. The convener and I might disagree with some of the details later, but I agree that paragraph 2.12 needs to be amplified and clarified to help the police.

10:15

Patrick Harvie (Glasgow) (Green): I support the call for paragraph 2.12 to be reconsidered. However, does not the contrast between what is described as "serious behaviour" and

"minor antisocial behaviour that causes only irritation",

make it clear that the latter would be excluded? Behaviour that causes more than irritation could be perceived as serious. However, I accept that there is a gap between the two extremes, as Donald Gorrie describes.

The Convener: For clarification, the implication of the second sentence of paragraph 2.12 is that the behaviour would have to pose a danger or risk and that there is no ground between such behaviour and minor antisocial behaviour. However, the reality is that minor antisocial behaviour that causes irritation will never reach a stage at which it has become persistent and has required the police to be called on a number of occasions, but it might fall short of putting people in danger or at risk. The implication of paragraph 2.12 is almost the opposite of what Patrick Harvie said. The high test would exclude all minor antisocial behaviour, which would be defined as

behaviour that did not put anyone at risk. That is my concern.

Mary Scanlon (Highlands and Islands) (Con): I think that my point is the same as the convener's. Paragraph 2.12 presents the situation almost in black and white by saying that behaviour that "causes only irritation" would not be regarded as being

"of sufficient gravity to be considered serious."

However, minor antisocial behaviour might cause irritation seven days a week, 365 days a year, thereby creating a persistent minor antisocial behaviour problem. We know that early intervention is the answer. Nine times out of ten, minor antisocial behaviour becomes serious antisocial behaviour in the long run. The message that is given out in the early stages is not always clear enough, so I support the calls for paragraph 2.12 to be strengthened.

Scott Barrie (Dunfermline West) (Lab): I want to return to Donald Gorrie's point about paragraph 3.4.

The Convener: I think that Sandra White wants to make a point about paragraph 2.12 first.

Ms White: There were always going to be problems with the definition of antisocial behaviour. Mary Scanlon talked about minor antisocial behaviour that is a problem seven days a week, but I would have thought that such behaviour would be classified as "persistent". The phrase "minor antisocial behaviour" should be removed. As the convener said, someone who smashed up a car would be causing criminal damage. Paragraph 2.12 should be rewritten to clarify what would constitute serious behaviour. How would we classify minor antisocial behaviour, given that what is minor for some people might not necessarily be minor for others?

The Convener: We should bear it in mind that we are talking about behaviour in the context of groups that gather. The consequences could be quite significant for a community over a long period, but the biggest problem—in terms of risk—might be what was happening inside the group. It might not be possible to disperse the group, although members of the group might be at risk and folk round about might be uncertain. We should flag up the matter.

The clerk's paper recommends that we consider whether to seek comments from the Executive on the issues—I beg your pardon, Scott Barrie wants to comment.

Scott Barrie: Donald Gorrie said that the second sentence of paragraph 3.4 is "feeble". However, the sentence should be read in conjunction with the following sentence, which says:

"Indeed dialogue at this level should already have taken place if antisocial behaviour is an ongoing problem in the area."

We should remember that paragraph 3.4 clarifies who would take responsibility for the negotiations about the designation of an area. Negotiations would take place between the senior police officer and a member of the council, but councils employ a large number of staff and generate a large amount of bureaucracy, so we must not create a situation in which police officers have to link up with a host of different people at different levels of the council. Paragraph 3.4 makes it clear that it would be for the chief executive or a designated officer to discuss the matter with the police officer. Before such negotiations took place, discussions would, of course, have taken place with everybody locally. The second sentence of paragraph 3.4 is not as feeble as Donald Gorrie suggests.

Patrick Harvie: I am not sure that I have the same understanding. Taken together, do not the two sentences suggest the possibility that local discussions could have taken place about antisocial behaviour—for example, in connection with antisocial behaviour strategies—before the prospect of the use of dispersal powers came up? Does the first sentence need to be strengthened to ensure that use of dispersal powers is subject to local discussions?

Cathie Craigie: We need to consider the context and background in the introduction to the guidance. It says that the dispersal powers are intended to be used

"where the antisocial behaviour in question has become significant, persistent and serious where other possible interventions such as prevention and diversion have failed, and where something else"

needs to be done. Where all else has failed and all those measures have been tried, the police will consider making use of the provision.

Patrick Harvie: The purpose of local discussions is surely to ensure that the community is involved in deciding whether it is appropriate to use dispersal powers, and not simply to ensure that the community has been involved previously in discussions about the antisocial behaviour and other measures that have not worked.

Cathie Craigie: That will all have been happening, but the responsibility for the decision rests with the police. After they have consulted and all other intervention measures have been tried, someone must make the decision. The act gave that power to the police and the guidance makes that clear.

The Convener: I do not know whether Patrick is suggesting that it would be possible to decide locally to use dispersal powers. The other side of

that argument is that, if you went into some of our communities and asked them now—before all the work has been done on the guidance—whether they want the power to be used, they would simply say yes because of their direct experience of antisocial behaviour. There must be some distance between the community and the operational decision about whether the power is used. In circumstances in which the police are forced to make that decision or are considering the option in conjunction with all the folk whom they have to consult, there would be a great deal of local awareness and there would have been discussion and dialogue over a period of time. However, it would only delay matters if—when the power might be exercised—it was necessary to have another layer of meetings before the police could act.

Patrick Harvie: An extra round of discussions would not be required, but strengthening the guidance slightly would ensure that discussions would include all the options that the police or local authorities were considering. The guidance as drafted could surely allow the possibility of such discussions' being initiated before the authorities started to consider the use of the dispersal power if, for example, they decided at first that the problem was not that serious but it escalated and they started to consider the dispersal power but had not discussed it with anyone.

The Convener: It would be extremely helpful if all those involved made it clear to communities what the powers are and what options are available to them. Quite often, people are told that there is nothing that can be done because ASBOs are not suitable for the situation or are too expensive, but if there was clarification of what could be done, how it could be done and when it could be done, that would aid understanding.

We can pass those comments on to the Executive—they will obviously be available in the *Official Report*—but we must decide whether to seek comments from the Executive on any of the issues we have discussed. I would be keen to get a response about dispersal. We could say to the Executive that certain issues have been flagged up and that it would be helpful to get comments on them without our necessarily saying that we are giving the whole committee's view on every issue. That would mean that we would get responses to everything that we have raised but would not have to wrestle over whether we all agree on every dot and comma. Would that be acceptable?

Members indicated agreement.

The Convener: We now move on to agenda item 4, which concerns pre-legislative consultation meetings on the draft Charities and Trustee Investment (Scotland) Bill. I suspend the meeting

for a couple of minutes before we go into private session.

10:27

Meeting suspended until 10.34 and thereafter continued in private until 10:55.

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