

# **COMMUNITIES COMMITTEE**

Wednesday 2 March 2005

Session 2

£5.00

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## COMMUNITIES COMMITTEE

### † 7<sup>th</sup> Meeting 2005, Session 2

#### CONVENER

\*Karen Whitefield (Airdrie and Shotts) (Lab)

#### DEPUTY CONVENER

\*Donald Gorrie (Central Scotland) (LD)

#### COMMITTEE MEMBERS

\*Scott Barrie (Dunfermline West) (Lab)

\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

\*Linda Fabiani (Central Scotland) (SNP)

\*Christine Grahame (South of Scotland) (SNP)

\*Patrick Harvie (Glasgow) (Green)

\*Mr John Home Robertson (East Lothian) (Lab)

\*Mary Scanlon (Highlands and Islands) (Con)

#### COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)

Christine May (Central Fife) (Lab)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

John Scott (Ayr) (Con)

Ms Sandra White (Glasgow) (SNP)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Karen Gillon (Clydesdale) (Lab)

David Mundell (South of Scotland) (Con)

#### THE FOLLOWING GAVE EVIDENCE:

Lindsay Addison (Douglas Community Council)

Stephen Boyd (Scottish Trades Union Congress)

David Brewer (Confederation of UK Coal Producers)

Ann Coleman (Greengairs Community Council and  
Greengairs Environmental Forum)

Niall Crabb (Scottish Coal)

Thomas Cronin (Douglas Community Council)

Lawrence Fitzpatrick (Scotland Opposing Opencast)

Martin Gaughan (Transport and General Workers Union  
Scotland)

Richard Hartland (Scottish Society of Directors of  
Planning)

Councillor James Kelly (East Ayrshire Council)

Duncan McLaren (Friends of the Earth Scotland)

Hugh Melvin (East Ayrshire Council)

Dr John Munro (Scotland Opposing Opencast)

Henry Thomson (Douglas Community Council)

Ian Wilson (Coal Authority)

Nicky Wilson (National Union of Mineworkers)

#### CLERK TO THE COMMITTEE

Steve Farrell

#### SENIOR ASSISTANT CLERK

Katy Orr

#### ASSISTANT CLERK

Jenny Goldsmith

#### LOCATION

Committee Room 1

† 5<sup>th</sup> and 6<sup>th</sup> Meetings 2005, Session 2—held in private.



## Scottish Parliament

### Communities Committee

*Wednesday 2 March 2005*

[THE CONVENER *opened the meeting at 09:32*]

### Opencast Coal (Draft Planning Guidance)

**The Convener (Karen Whitefield):** Good morning and welcome to the seventh meeting of the Communities Committee in 2005. I ask members of the committee, witnesses and visitors to switch off their mobile phones.

Agenda item 1 is on Scottish planning policy 16, "Opencast Coal: Consultation Draft". The committee will hear evidence from five panels. The evidence-taking session is designed to give committee members an opportunity to hear views on the draft of SPP 16, which represents a significant change in the planning guidance on opencast coal mining. A number of key issues were raised during the Scottish Executive's consultation and today's session will allow the committee to hear those concerns before the Deputy Minister for Communities comes in next week to answer questions on how the Executive intends to respond to the results of the consultation.

I welcome Duncan McLaren, who is chief executive of Friends of the Earth Scotland; I am grateful to him for joining us this morning. Thank you for your written submission, which the committee received in advance. It is vital that there is full community involvement in the planning process and that we do not just pay lip service to it. How can we best ensure such involvement?

**Duncan McLaren (Friends of the Earth Scotland):** That is a broad question to which there are many answers. Our experience is that in cases of opencast mining, as with many bad-neighbour developments, communities struggle to feel that they are properly involved. They lack access to information and decision-makers and the ability to challenge what is said by the industry and by decision-makers. A swathe of reforms is necessary. The draft planning guidance on opencast coal takes several steps in the right direction but it needs to be backed up by the reforms that we hope will be included in the planning bill in the autumn. I know that the committee will scrutinise that bill carefully.

**The Convener:** Do you think that the suggestions that organisations such as Scottish Coal have made, on the concept of enforcement

plus and the establishment of liaison committees, will be of benefit? Will they go far enough to protect communities against the abuse of opencast mining or do you think that those measures are welcome but should be additional to the Executive's proposals?

**Duncan McLaren:** Such proposals are clearly an "and" rather than an "or". I am afraid that, in our experience, enforcement is poor. It seems that operators frequently—I will not say consistently because I do not have experience of every operator—have scant regard for conditions and that the authorities are unable adequately to enforce those conditions because they are under-resourced. We believe that full access to justice under the Aarhus convention, which enters into force in the UK in May, will give communities a right to challenge both operators and authorities where they believe that enforcement is not happening correctly. I will not give examples because I am sure that the next panel will tell you about specific cases of non-enforcement, such as working beyond boundaries, working outside permitted hours and so on.

**The Convener:** The Executive proposes introducing a presumption against opencast coal developments. In your submission you express concern that there could be ambiguity in the test that would apply to that presumption. Will you explain your concern?

**Duncan McLaren:** We believe that the presumption against opencast development is sound. The norm is for opencast mines to be disruptive and therefore potentially unacceptable, particularly in the context of climate change. We believe that there is a case for not using coal unless it can be used in a way that is carbon-neutral and the Scottish Environment Protection Agency has told us that that is not possible at the moment.

The primary test is whether the development proposal is acceptable in the context of the impact on both the community and the environment—that is mentioned in the main part of the draft policy, as opposed to the summary. Our concern is that it must be made clear that that test must be satisfied at the local level and that the acceptability of the development to the local community must be tested against that community. That might sound dismissive of local authorities, but as parliamentarians you will know that pressure of time or the need to balance various interests can make it harder to assess and represent the interests of smaller groups within your constituencies. We think that that is what happens with local authorities—they are given the impression that there is a wider interest and they do not necessarily adequately consult or involve directly affected communities. We seek

clarification on that key point. It must be the directly affected community that says, "Yes, this is acceptable."

One way of doing that would be to require that the developer and the community sign a good-neighbour agreement. We are sceptical of liaison committees as a means of ensuring good practice, although they work in limited circumstances. You might wish to ask the Greengairs Community Council and Greengairs Environmental Forum about their experience with Shanks & McEwan Ltd, with whom they would say that they have a relationship, which contrasts with what they tell us about the practices of the opencast operators in the vicinity.

The second test is that of overriding the impacts, which somehow must be made acceptable, even if they are going to be overridden by other interests and benefits for the community and area. The current guidance rightly says that community benefit through a planning agreement is not material if it is not related to the planning application. The same principle should be applied in SPP 16, or there will be a divergence and we might find that, without meaning to, we have given developers an incentive to offer some sort of unrelated community benefit, which might be used to justify an otherwise unacceptable proposal. That is clearly not the intention. We also endorse the Scottish Environment Protection Agency's remark that the conditions of the second test should include reference to the environment.

**The Convener:** So community benefit should not be about simply building a swimming pool or sports centre in a community or planting some trees, but about a long-lasting community benefit, which might involve the reinstatement of land for future alternative use, which would be of great benefit to the community. The balance must be right.

**Duncan McLaren:** The reinstatement of land should be an essential part of any planning application for opencast mining. We are particularly concerned to hear of instances of planning authorities failing to insist on a restoration scheme up front and restoration schemes not being implemented in a timely fashion. I have seen that problem with minerals more generally.

**Patrick Harvie (Glasgow) (Green):** Is it appropriate that opencast coal mining is the only type of development in Scotland to which a presumption against development applies?

**Duncan McLaren:** Strangely, on that question, I find myself in some agreement with Scottish Coal, which has expressed concern that opencast coal mining is the only type of development to which such a presumption applies—but that agreement will be unusual this morning. It would be good

practice to have a presumption against development for all significant bad-neighbour developments, such as landfill sites, which clearly fall into that category. I hope that the presumption is a signal that the Scottish Executive is sequentially putting the principle of environmental justice into planning policy. However, opencast coal mining is clearly one of the most disruptive and damaging forms of development to a local area and is an appropriate place to start that process.

**Patrick Harvie:** Do you share the concern that some of the so-called benefits in the draft policy that would override the presumption against development might not be significant?

**Duncan McLaren:** I do indeed. The list of benefits and disbenefits reads more like a list of factors that may be taken into account one way or another in deciding on planning permission. Many of the items in the list of benefits are phrased as avoiding too severe an impact. I have read submissions that suggest that other positive benefits have been overlooked, but most of them have nothing to do with planning and therefore should not be added to the list.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Good morning. In response to a question from the convener on the subject of enforcement, you said that the next panel would probably have more to say on the issue. However, can your organisation suggest any remedies for situations in which a local authority is not pursuing enforcement?

09:45

**Duncan McLaren:** I have three or four suggestions to make on that. First, this committee should ensure that the proposed planning bill will give ministers the power effectively to direct enforcement when it is not happening on the ground, in the same way that ministers currently have powers to decide on a planning issue that a local authority has not dealt with properly.

Secondly, the Scottish Environment Protection Agency needs to toughen its enforcement on issues such as air pollution and particulates. I am aware that SEPA is reviewing its enforcement practices. I am also aware of potential problems at the margins of what SEPA considers to be regulated and unregulated processes. I urge the committee to look at the interface between environmental enforcement by SEPA and by the local authorities. At the moment, neither seems to be working in the interest of communities.

Thirdly, as I mentioned earlier, I suggest that an implementation of the spirit of the Aarhus convention—rather than sticking to the letter of Aarhus—would ensure that communities had clear

access to justice. Such implementation might involve setting up a new environmental court or tribunal to which communities could take challenges if they felt that enforcement was not being appropriately undertaken. For example, a community could put a local authority on notice that an issue should be enforced. If the authority did not take enforcement action within 30 or 60 days, the community could take the authority to the tribunal for an examination of the issues. If the finding was in favour of the community, enforcement would be ruled to be necessary.

Finally, there is the idea of good-neighbour agreements or good-neighbour contracts. Again, there is scope in the proposed planning bill to ensure that the signing of a legally binding contract between a community and an operator is made an effective planning condition. At the moment, it is unclear under planning law whether that could be done as a planning agreement or condition. If that were clarified, a community that considered an authority's enforcement to be inadequate could require the belt and braces approach of a contract with the developer that could, if necessary, be enforced in a court of law.

**Cathie Craigie:** The coal industry is concerned that if SPP 16 is implemented, it could lead to a decrease in Scottish coal production. To meet current demands we would then need to import coal that is not mined to such high environmental standards. Do you have any comments on the effect that that could have?

**Duncan McLaren:** That is like saying that because child slavery is permitted in Burma, we should permit it in Scotland. We must impose appropriately high standards on our operators. If necessary, we should seek to ensure that contracts are available for the amount that is deemed to be appropriate to produce in Scotland. It is not appropriate to scaremonger about conditions elsewhere. We should use Scottish standards as a means of improving standards throughout the system. In many industries, an operator that is required to work to the highest standards in one country will normally impose those high standards on its operations in all the different countries in which it works.

**Mary Scanlon (Highlands and Islands) (Con):** Your submission highlights concerns about the distances between sites, but it welcomes the extension of the separation distance from 100m to 500m. What direct benefits will that extension bring to communities?

**Duncan McLaren:** The increase in the separation distance will bring clear benefits as it will reduce the impact of noise from working and the impact of dust and particulates. At the moment, the problem is that such impacts can occur outside the site even if the operator does not

overstep the boundary. Impacts can come from parts of the operation that are not the working of the operation, such as the storage of soil in bunds. Topography permitting, the risk of landslip or collapse of those bunds can have impacts that go some way beyond the 100m distance around the site. A number of things would improve as a result of an increase in the separation distance.

**Mary Scanlon:** Do the new separation distances make opencast coal mining acceptable?

**Duncan McLaren:** It is not acceptable as a general principle. As has been highlighted in the consultation responses from Scottish Natural Heritage, the Scottish Environment Protection Agency and many other environmental and community groups, opencast mining has impacts even beyond the 500m distance. We agree simply that the level of impact that can be imposed on a community within the 500m distance is unacceptable, particularly given the risk—this ties in with the need for enforcement—that operators will work outside their permitted boundaries. That has happened more than once in our experience of working with communities. At one site, the distance between houses and the working face was the width of a C-class road.

**Mary Scanlon:** Finally, have you any comments on the proposal for dealing with cumulative impacts within a 5km radius?

**Duncan McLaren:** Having read through much of the evidence, I think that the proposal appears to have confused some people. There are sound grounds for having a defined distance within which proposed sites must pass a test for cumulative impacts. From my reading of it, the proposal is quite logical, in that it would require the developer first to check whether there were communities within 5km of the proposed site and then to check whether those communities were affected by other sites within a distance of 5km. In our view, complexity would be reduced and communities would be given more certainty if the rule was simply that there could be no more than two operations within 5km of a community. Although that might provide an incentive for larger rather than smaller operations, we would hope that the scale of operations could be managed appropriately by the planning authority.

**Scott Barrie (Dunfermline West) (Lab):** SPP 16 states that local authorities should ensure that no community should be subjected to a disproportionate environmental burden. The written evidence from some community groups raised concerns about the cumulative effect of consecutive developments on the same site over a prolonged period. Does the policy as framed give communities adequate protection from continued development on the same site? Is there any way in which the policy could be improved?

**Duncan McLaren:** I suspect that more explicit recognition could be given to the potential cumulative impact over time. As it stands, the guidance represents a good step towards recognising and managing cumulative impact.

I do not want to speak for a community—indeed, I hope that you will ask the next panel the same questions—but I get the impression from the communities that FOE works with that they are not nimbys or anti any development and that they are prepared to accept a reasonable amount of development in their areas, particularly in the coalfield areas. As the industry has rightly pointed out, coal can be worked only where it is. Communities might be more accepting of a small amount of well managed development stretched out over a long period, rather than a large amount of development over a very short period. The former approach would certainly be better in broader environmental terms and would help us to manage our coal resource sustainably, without adding excessively to climate change in the short term.

**Scott Barrie:** Given that communities' interests can be protected if planning conditions are vigorously enforced, surely they need to be reassured that that will happen and that they will not have to keep facing a cumulative situation in which, over time, a planning application for X becomes Y, then Z and then Z-plus. Would communities not be reassured if everything was considered at the one time?

**Duncan McLaren:** I agree with almost all those comments. Certainty is highly desirable and effective enforcement is essential. The practice of applying for a site and then adding extension after extension is detrimental to community interests and to certainty. I should point out that we also have to keep the overall impact and scale of operations within an acceptable limit at any given time.

**Donald Gorrie (Central Scotland) (LD):** In your submission, you criticise paragraphs 31 and 32 of SPP 16, which deal with supporting information on future development and so on. Will you put some of those concerns on the record?

**Duncan McLaren:** We very much welcome the intention behind and spirit of the guidance. It is entirely reasonable to seek as much information as possible to stop—as Scott Barrie pointed out—the sequential creep of applying for a certain amount of development one year, a bit more the next year and so on. However, we are a little concerned about how the draft guidance puts the duty on the individual developer. It would seem more appropriate to place a commensurate duty on local authorities to obtain information from the Coal Authority about all nearby deposits and to consider any application in that context. There

might be a need for much greater clarity and public disclosure of all interests in mineral rights by different developers. That is something that I have encountered in the wider mineral system. For example, in aggregates, the industry has resisted revealing landbanks of supply, which has distorted the planning system.

To be honest, I am not sure whether the problem with coal is as severe. However, given the reactions to the proposal, the system could benefit from a general duty to disclose interests in a register that is accessible to the local authority. Such an approach might be more comprehensive and effective than the approach outlined in the draft guidance, but we do not dispute the intention behind that guidance.

**Donald Gorrie:** In your evidence, you are sceptical about how the system might work in allowing a genuine contribution by the local community. I was interested in your suggestion for a third-party right of appeal. Do you have any other suggestions for how we can make the system more watertight, so that local communities are satisfied and coal interests are given a reasonable chance to put their case?

10:00

**Duncan McLaren:** There are a number of suggestions. In our view, a third-party right of appeal would create a dynamic incentive for developers to put forward proposals on which they had consulted the local community properly. In that way, there would be less risk of an appeal, and certainly less risk of a sustained appeal, after the event.

I have mentioned the possibility of having good-neighbour contracts. We could also look either to mandate pre-application consultation for major and controversial developments or at least to require a report on pre-application consultation to be provided to the planning authority and to be considered as part of the proposal. Where that was lacking or inadequate, it would be in and of itself grounds to dismiss or send back an application and say, "Come back when you've actually consulted the community and can demonstrate that this is acceptable to them."

**Donald Gorrie:** Thank you. That is helpful.

**Christine Grahame (South of Scotland) (SNP):** Donald Gorrie mentioned third-party rights of appeal. It is difficult to consider the guidance outwith the context of the new planning law that is to come before us. The new planning legislation may make pre-consultation and consultation with communities much more rigorous and perhaps even introduce a limited third-party right of appeal. Would it be possible for the new planning guidance to be concluded prior to the planning



legislation being brought forward, given that the guidance is so integral to what will happen in the larger framework?

**Duncan McLaren:** It would be a pity if it were not possible, as some communities, particularly in the Douglas valley, are already facing multiple applications, which would be far better dealt with under the new guidance than under the existing guidance. I can see your concerns. I argue that the aspirations for the current draft are in tune with those that have been expressed for the planning bill, which will aim to increase certainty, reduce delay and maximise the opportunities for communities to participate.

The issue today is to bring the guidance into force as quickly as possible and to back it up with broader reforms that will ensure the effective implementation of planning conditions, including procedural reforms to enable participation. I anticipate that, once the new system is embedded, the coal industry will find the guidance of less concern than it does now.

**Linda Fabiani (Central Scotland) (SNP):** My apologies for being late. I hope that I did not miss much.

I have heard a lot since I came in about a lack of enforcement by local authorities. Are local authorities doing as much investigative work under the present system as they should be doing before giving planning permission?

**Duncan McLaren:** I suspect that authorities are rarely investigating major and controversial developments adequately before or after proposals come into operation. It is clear that there are resource problems for local authorities—it is not purely a lack of will—but in too many cases there is a culture of high-level contact between the developer and the authority, with limited contact with the community. Whether or not it is reasonable to negotiate a controversial development—it might be reasonable—communities are very definitely left feeling that their views have not been taken into account and adequately considered.

**Linda Fabiani:** If there is a resource issue now, there will continue to be a resource issue if we change the system. Is there a danger that local authorities would still not bother carrying out all the necessary work and that they would cop out of giving planning permission for developments? Has that been an issue for you or your colleagues south of the border?

**Duncan McLaren:** I cannot speak for colleagues south of the border. There might be an issue. One of the most important things that we can do to ensure that resources are available is to unload the system by removing unnecessary applications. The draft guidelines, which would

create a presumption against development, represent a step in the right direction, in that they would ensure that only sound applications came forward. The provision in the proposed guidelines to eliminate repeat applications is also positive. I hope that the forthcoming planning bill will do more to reduce the prevalence of twin-tracked and repeat applications and the unnecessary appeals by developers that currently gum up the planning system.

**The Convener:** We are joined by a number of colleagues who are not members of the committee but have an interest in the subject. I invite them to ask questions.

**Alex Fergusson (Galloway and Upper Nithsdale) (Con):** I approach the issue from a narrow perspective, as the representative for the constituency of Galloway and Upper Nithsdale. I am sure that members are aware that Upper Nithsdale has a more than significant interest in the well-being of opencast coal mining. Nearly 200 of my constituents work in the industry in east and south Ayrshire and slightly further afield, rather than in Upper Nithsdale.

I do not underestimate the great difficulties that some communities are having. You highlighted many such communities, Mr McLaren, but do you accept that many communities would welcome opencast development if it were properly regulated and policed? One such community is that in Upper Nithsdale, where there is a proposal for further development.

Secondly, do you agree that the real concerns that you raise could be addressed without necessarily resorting to the ultimate presumption against development? I accept that you cannot speak on the situation south of the border, but we cannot entirely escape from considering the fact that, in 10 years, production has decreased from 9 million tonnes to 1 million tonnes, if my figures are correct.

Finally, I understand that a voluntary policing and enforcing routine has been put in place at a development in Fife with the agreement of the local authority and the developing company. I understand that the system works extremely well; it is certainly much less bureaucratic and protracted than the possible enforcement procedure to which you referred. Have you visited that pilot project? If so, what is your opinion of it?

**Duncan McLaren:** I have not visited the project, but I would be interested to do so.

You describe the presumption against development as the “ultimate” approach. I do not think that that is the case. The draft guidelines do not represent a sweeping presumption against development but set out useful acid tests to determine where opencast would be acceptable.

I can conceive of a community that would accept—I say “accept” rather than “welcome”—well-regulated opencast. Indeed, even some of the communities with which we have worked, which have had the most problems with poorly regulated and poorly operating opencast, might accept well-regulated development.

The first issue is whether the system offers the opportunity for tight regulation. I do not believe that it does, but the guidance will help in that respect. The next issue is whether the cumulative impact is acceptable; the draft guidance addresses that matter well. We then move to the issue of the long-term interests and survival of the industry. I am acutely aware of the job implications for the opencast industry. However, in the cases that I have looked at, job losses predominantly involve non-local people. The workforce tends to comprise mobile, non-local, skilled labour.

The long-term job benefits that arise from the industry as it extracts coal—or other fossil fuels—burns it, generates electricity and, as a consequence, generates climate change are significantly less than the job benefits that accrue from a combination of energy efficiency and renewable energy. I understand that Government strategy is to support the latter. I support wholeheartedly a call for effective transitional aid and support for communities that would lose jobs where an environmentally destructive industry is being phased out over time.

That is my frank assessment of the situation for opencast. I sympathise with the member's constituents and make a call for support that would ensure that transitional employment and training are made available to ensure that direct job losses do not occur. However, as part of the green jobs strategy that the Executive is putting together, the Executive should be examining explicitly how we deal with the transition from the unsustainable industries of the past to the sustainable industries of the future. In general, as the sustainable industries are more job rich, the issue is about transition.

**David Mundell (South of Scotland) (Con):** Other members have mentioned the ability of local authorities to deal with applications and enforcement. In trying to contribute to the process, communities often feel overwhelmed by the volume of documentation. For example, the environmental impact assessment alone may be a huge document, so how can a community be expected to respond to it? I am also concerned about how an individual local authority—or, indeed, an individual planning officer—can be expected to manage the volume of documentation. Somehow, at the end of the process, everybody should feel that a balanced and fair outcome has been achieved. If permission is granted, the

community and the planning authority need to be able to deal effectively with enforcement issues.

**Duncan McLaren:** There is a nexus of questions in that, which I will try to handle quickly. As I said in response to a question from Ms Fabiani, to enable an authority to manage both the documentation and the process, part of the answer is the removal of unnecessary applications from the system through a combination of presumption against development and eliminating repeat applications. If that were to happen, resources could more effectively be put in place to deal with other applications.

You are right to say that communities need help and support. It is appropriate at this point that I acknowledge funding from the Executive's sustainability action grants for Friends of the Earth's citizen's environmental defence advocacy project, through which we work with communities to help them to understand planning issues and, if necessary, effectively hold their hands throughout a planning inquiry.

Similarly, the Executive funds planning aid, which can also help communities in that respect. I suspect that there is a need for a small increase in funding for such schemes. On the grand scale of things, such an increase would be a small amount when compared to the amount of resources elsewhere in the system and, in particular, the resources that developers can mobilise for legal advice and other consultancy.

I am sure that another point was involved—

**David Mundell:** It was the point about enforcement.

**Duncan McLaren:** Yes.

**David Mundell:** Obviously, because applications tend to involve a relatively small number of local authorities, those authorities are required to put up a disproportionate amount of funding from their own resource allocation.

**Duncan McLaren:** That is one of the hardest issues to resolve. As you will have seen in the submissions from members of the next panel, communities find enforcement to be very limited. Even when communities witness—and, indeed, video and document—breaches, the planning authorities do not necessarily accept the evidence.

Perhaps we need to improve the standards throughout the system for accepting local community witnesses' evidence. If that were to happen, we would also see an increase in the willingness of communities to participate in enforcement. I repeat what I said earlier: the provisions under Aarhus might allow us to take forward the issue. Given that the impacts often affect people's right to a healthy life and privacy, a

broad approach should be taken to strengthening our human rights culture.

**The Convener:** I have one final question, which does not require a long answer—a simple yes or no would probably do. If the Scottish Executive implements SPP 16 as consulted on, do you believe that that will end all opencast in Scotland?

**Duncan McLaren:** No.

**The Convener:** Thank you. With that response, I thank Mr McLaren for his attendance.

10:17

*Meeting suspended.*

10:21

*On resuming—*

**The Convener:** I welcome our second panel of witnesses. We are joined by Ann Coleman, who is a co-opted member of Greengairs community council and a member of the Greengairs environmental forum; Lindsay Addison, who is chair of Douglas community council; Lawrence Fitzpatrick, who is convener of Scotland Opposing Opencast, and Dr John Munro, who is also a member of SOOT. I understand that we are also joined by Henry Thomson from the Glespin community group. Given the large size of the panel, I ask members to keep their questions short. I also ask for one witness to be nominated to answer so that we can hear answers that are as constructive as possible.

I will start with a question about involvement of communities in the planning process. What steps need to be taken to ensure that communities are effectively involved where applications for opencast developments are made?

**Ann Coleman (Greengairs Community Council and Greengairs Environmental Forum):** It is most important that we have honesty. We also need to build trust because nothing will be effective without that. We are starting from a bad place in that the communities that have experienced opencast mining do not trust anybody. As well as trust, we require openness and we must be sure that the information that is given to us is accurate. It cannot be a con: the information that people get must be factual and must not contain misinterpretations.

Communities should be involved from a very early stage. I was interested to hear Alex Fergusson talk about communities actually welcoming opencast mining earlier in the meeting. I wonder whether the communities concerned will still be welcoming opencast mining a couple of years down the line. If the site does not operate

correctly from the beginning, people can effectively forget proper involvement. The information must be made available and should be in a form that the public can understand.

You have to give communities some power. You have to give us credibility and equal participation because our voice must mean something. At the moment, the balance is skewed away from communities and from the impact of opencast mining on them. In our area it is a matter of just a handful of jobs, but there are in excess of 4,000 people—probably nearer 6,000 people—living around the perimeter of the opencast mining area. What about giving them some consideration? At the moment, there is no equal consideration of them, so we are asking for equality. For the process to be effective, we must address that.

We must start from the view that opencast mining is not really a good-neighbour development. As members know, certainty is a huge issue for us all. Once a process starts, it may go on and on. If the system is to be effective from day 1, you must start by building trust. Something must be built into the process to ensure that we can trust the information that is given to us.

**Lindsay Addison (Douglas Community Council):** Good morning. As has been stated, for communities the present process is a burden of trees—we have to go through a large amount of paperwork. Douglas community council is currently handling four applications for opencast mining, as well as four applications for wind farms. I want to highlight to the committee the issue of planning process timescales. An application from an operator may have taken months, if not years, to draw up, but we are given only 14 or 28 days within which to respond to a document that may be 4in thick, although we are not experienced in such matters.

The three representatives of Douglas community council who are here spend long, dark hours trawling for and finding information, coming up against brick walls, being misinformed and being advised to do this and that by authorities as well as by others. We have to jump through hoops of fire just to establish basic facts. At the moment, the planning system does not provide sufficient assistance to communities; it does not provide us with even basic assistance.

**The Convener:** As community representatives, how would you like to be resourced or supported to engage with the planning process and the development of local and area plans? You have expertise in this area and know the difficulties that you face currently and have faced in the past. What can be done to help you?

**Lindsay Addison:** First, there must be changes to the timescales. Secondly, we should be given

professional independent advice. It is difficult for us to work with an operator who gives a one day, two-hour-long exhibition on their proposal, or to go through all the material that we are given when we try to arrange a meeting with the head of planning. We need professional independent advice and a substantial period within which to go through the process with professionals in the area.

**Dr John Munro (Scotland Opposing Opencast):** I would like to make a specific point. Environmental impact assessments vary hugely in quality. They are drafted for the operator and sometimes are not only misleading, but inaccurate. All communities would welcome the opportunity to make an impact on that mechanism. We have suggested that planning authorities be empowered to draw up shortlists of people whom they believe are competent to provide objective environmental impact assessments. One hopes that firms would then ensure that they produced objective assessments, because otherwise they might lose their shortlist status. If communities knew that an environmental impact assessment was accurate, a huge amount of the anxiety that is felt by people who face a planning application would be removed.

**Donald Gorrie:** I will pursue the same line. You are valuable to us because you come from the front line, as it were, rather than from the theoretical approach. In addition to what you have usefully said, do you have any other specific examples of how the present system is not operating appropriately? What specific things would make the system operate better, either according to the Government text or from your own ideas?

10:30

**Lindsay Addison:** On the back of what I have presented, I would obviously say instantly that the fact that we have had four applications floating around shows that it is completely ridiculous to ask inexperienced volunteers to cope with such an amount at the same time. In the short time that our community council has been in existence, we have had four opencast mining applications to discuss. We need to know how that can be allowed to happen. Time must be defined and allotted, which would obviously help with the local authority's funding and operating of the applications. I know that South Lanarkshire Council has had to hire an extra planning officer during the process that we are currently going through, which is a cost to the public purse. There are problems for us in going through applications one at a time and in finding a process that is independent and accurate.

**Henry Thomson (Douglas Community Council):** The problem is about the times when the applications come in—they always seem to

come in at holiday times or at Christmas. We do not as it is have enough time to deal with them because we are not professionals, but they always seem to come in just when everybody has plenty of other things to do or when it is holiday time and people are not interested.

**Dr Munro:** I would like to make a specific point about repeat applications. One welcomes the proposed changes in SPP 16, but one of the problems that communities face is that, at present, if an application goes through due process and is rejected, there is still the fear that another application will be made within two years. I put it very strongly to the committee that local authorities should have the power, after an application has been turned down, to consider removing part or all of the area concerned from the search area as soon as the appeal process has been completed, or it is clear that there will not be an appeal. It should not be left until the next plan is drawn up, possibly in a few years' time. Again, that would reduce pressure on communities.

**Lawrence Fitzpatrick (Scotland Opposing Opencast):** One of the problems in dealing with opencast mining applications in any community is that there is generally an automatic presumption in planning law in favour of anything—absolutely anything—until it is proven to be contrary to planning policies. I became involved because I read the Flowers commission report, which was commissioned more than two decades ago by the then Conservative Government. That report described opencast mining as the most destructive environmental process in the United Kingdom.

I worked with the community in Blackridge and Harthill, who were faced with an opencast mining application. One chap, Bill Allison, gave his life for that campaign. He was a retired mining engineer who was working day and night. No money was provided to that group, which had to examine impact assessment studies, to become meteorologists in order to understand wind, to become geologists and landscape specialists and so on. The industry has a full array of experts to do all those things. People in communities such as Blackridge, Fauldhouse or the Douglas valley do not have such resources; they are almost invariably former mining communities that have—let us be honest—a footprint of poverty and bad health. There are plenty of men in those communities who have retired from the mining industry. It is a David and Goliath situation. Unless the communities are organised, equipped and financed, there is absolutely no way they can be a match for any applicant.

I wonder about the whole system of European law, which talks about equality of arms. Where there are combatants in any civil litigation, there

must be fairness. There is no fairness for communities such as Greengairs and Douglas. I hope that the committee can find a way to address that.

**Lindsay Addison:** I will add a small point for Mr Gorrie. The issue is that from Europe all the way down to local authorities, there is usually some form of mineral plan. We would like to see plans being adopted and made to work properly by the authorities.

**Henry Thomson:** And enforced.

**Lindsay Addison:** Yes. Regardless of what is in black and white, from the Douglas community in South Lanarkshire up to Europe, it seems that we are the monitors who remind the authorities to read the papers and the policies. That is awkward, because we are not financed and we do not have the time to do that—whether we work full-time, part-time or are unemployed—because we are volunteers.

**Ann Coleman:** One of the problems is that although developers come along and give presentations and talk to communities—which I encourage, because it is important—we also need the local authority planning department to play a part and to come into the community. Every time we have invited representatives of the planning department to come, they have not turned up. We do not get councillors, we do not get planning officials and we do not get the Scottish Environment Protection Agency—none of them will come and talk to us. We are not getting the help that is supposed to exist. At the end of the day, nobody ensures that the information that we are given by the developer or local authority is accurate and followed up. On several occasions in Greengairs we have been given at public inquiries information that proved to be false, but nobody is held accountable.

We have a landfill, which everybody else thinks must be 10 times worse than the opencast mine, but it is not. It is more regulated than the opencast mine and the landfill operator works with us. That operator is up-front and talks to us. We tell each other the situation as it is and we have managed. The culture of the opencast mining industry appears to be one of secrecy. Open up your doors, guys. Invite us in—show us how it is. I have asked three times to go along and see the opencast mining site in our area during blasting and at other times, but I am still waiting for an invitation. The industry should be open and accountable for the information that is given to us so that we can ensure that what we base our thoughts on is accurate.

What is the purpose of environmental impact assessments? They are used to put conditions on planning applications to protect the public and the

environment and to reduce the impact on them. However, what is the point of that when the conditions are not enforced? Local authorities do not have the resources or the powers that they need: we do not have enforcement officers 24/7, although we need them. We need to be able to pick up the phone at any time. We need to be able to move into the 21<sup>st</sup> century in terms of local authorities accepting complaints on the other end of a telephone or by e-mail, as opposed to having to put them in writing and send them in the mail. By the time the complaint gets to the local authority, the incident is over. The system is useless; it is ineffective and it does not work. I am sure that we could work together, if we had an up-front system of accountability.

**Donald Gorrie:** I am sorry, convener, that we have broken your rule to keep things brief, but that exchange was helpful.

**The Convener:** We will return to enforcement later, Dr Munro, when you will have an opportunity to say something.

**Christine Grahame:** One of the most critical parts of the policy is the introduction of the presumption against opencast mining developments, which brings us somewhat into line with England. Could you comment on that change from the existing guidelines?

**Dr Munro:** When one reads paragraph 8 of SPP 16, it is important to appreciate what it is saying, which is that there is a presumption against opencast coal mining unless the proposal is acceptable or local communities will benefit from it. It is not an automatic presumption against opencast coal mining. It would be bizarre if we were saying that opencast coal mining could be permitted even if the proposals were unacceptable and would bring no benefit.

I do not really see, therefore, that the policy will have the huge impact that the industry claims. If the industry were to press its point, one would have to say—as has been said before—that the industry has recently insisted that opencast extraction should be managed on a United Kingdom basis. In that regard, I point out that much more opencast mining is done in England and Wales than Mr Fergusson suggested. If opencast extraction is to be managed on a UK basis, it would only be equitable for the same environmental protection to be afforded on both sides of the border.

**Lindsay Addison:** I would add that the two tests in SPP 16 make it fair, but one has to put meat on the bones of those two tests, as Dr Munro has said. The policy is built on those two tests, but failure to meet them does not mean that the industry will automatically come to an end; it means that criteria will have to be met. Everyone

who is sitting at this table and hundreds, if not thousands, of people in communities have asked for that for years.

Without wanting to sound over the top, the presumption against opencast mining seems to have come a bit too late. National planning policy guideline 16 made an attempt to cover the community issue, but it obviously failed, which is why the Scottish Parliament has been asked to come up with a Scottish policy. The presumption against opencast mining, with the two caveats that have been mentioned, is fair to say the least.

**Christine Grahame:** On the test relating to whether a proposal is acceptable, Friends of the Earth expressed concerns about to whom a proposal should be acceptable. Those concerns were raised in connection with third-party rights of appeal. Do you share those concerns?

**Ann Coleman:** We should not forget that planning policy is not law and that, as well as planning policy, people also have to bear in mind local plans and structure plans. At the moment, planning applications that are contrary to the local plans and structure plans can still be approved. I suggest that the test in paragraph 8 of SPP 16 is quite weak. Since the process is not accountable, if a proposal is approved on the basis that there will be a community benefit and we do not have any right of appeal, who will ensure that there is a community benefit?

**Christine Grahame:** That is the second test.

**Ann Coleman:** Yes. How are we going to ensure that community benefit materialises?

A presumption against opencast mining would give us a bit of equality. It is almost as if there is a presumption in favour of the proposals at the moment and that the rights of the community and the people who live nearby are further down the list. If there were a presumption against such developments, we would come further up the list of considerations.

**Christine Grahame:** Can you comment on the other part of the issue, which is the compliance plus alternative that is outlined in Scottish Coal's submission? That model is already in operation at Scottish Coal's St Ninians site and we will hear evidence about that after you have left the table.

**Lawrence Fitzpatrick:** I have not read that submission, but I can say that it is quite clear that SPP 16, the original guidance that was issued, was a barrister's breakfast. The industry's magazine advises its readers that the regulations in Scotland take a much lighter touch and that, because of the clampdown in England, Scotland is the place to go, and it refers to operators being drawn to certain opencast sites like iron filings to a magnet. That was submitted in evidence that we gave earlier.

**Christine Grahame:** What date is that magazine from? Is it from 1998?

**Lawrence Fitzpatrick:** It came out in 1998-99. Copies have been presented at various times to various committees of the Parliament. However, it is clear that the regulations were not working and did not have the robustness of the guidelines south of the border.

10:45

**Lindsay Addison:** On the acceptability point, the question is how the hierarchy would be placed. If it is the environment of the globe that we are talking about, that is the acceptability level at which the proposal is pitched. It would then, potentially, be a matter of working down from there. If the next layer is—as in my view, it should be—the communities that are affected, it would be necessary to find out whether proposals are acceptable in their terms. If the policy is based around a presumption against the industry or the creation of that energy, it is starting at a different point.

**The Convener:** Scottish Coal has argued with the committee that compliance plus should replace the presumption against opencast mining. I appreciate that you have not seen the paper, which suggests the establishment of a liaison committee, a restoration board, an independent compliance assessor, a technical review panel and a planning condition requirement. As a constituency MSP who has had to deal with such difficulties, I say that all those suggestions are welcome. What compliance plus fails to take into account, however, is the community's view. Do you agree that community benefit is as important as all the things that have been listed previously?

**Lawrence Addison:** The things that have been listed already exist. Our community has seen exactly the list that you have given; it is exceptionally disappointing if the industry thinks that communities should be at the bottom of the list or not even on it: it is exceptionally arrogant of the industry to think that we who would have to put up with the opencast mining for X years should not be on that list. That is unacceptable. I repeat that what you listed is already in place.

**Scott Barrie:** Let us return to the question of enforcement and monitoring. The written evidence from SOOT highlights concerns about inconsistent use of local authority enforcement powers against opencast mining operators that breach planning conditions. Can you give us examples of such problems and say what you think needs to be done to improve the situation?

Your written submission talks about an itinerant workforce moving from one site to the next and there being no job opportunities locally. That takes

us back to the question that Alex Fergusson asked the first panel of witnesses. When Longannet deep pit—the last deep pit in Scotland—shut, a large number of the men who were employed there came from other parts of Scotland. We did not see that as necessarily being a problem. Can you comment on that as well?

**Dr Munro:** I will comment on the employment issue first. I do not think that we have ever suggested that there have been no jobs available locally; however, not all the jobs have been available locally. Understandably, opencast mining operators move staff that they have had working on one site to the next site. If that were not the case, those people would in effect be working on a casual basis. There are two sides to the employment equation. The other side—which has been mentioned—is the negative effect. If opencast mining takes place or is threatened for an area, there is a negative impact on other forms of employment in that area.

In addition, over the past few years, the coal industry in Scotland has banked an enormous amount of coal that has already been consented; we are talking about in excess of 53 million tonnes. The present rate of extraction is roughly 8 million tonnes a year, so we are talking about consented coal banks—not the coal that is being worked, but the coal that is waiting to be worked—for at least eight years at the current rate of extraction. I find it hard to sustain the suggestion that any change will have a major impact on employment.

Scott Barrie also asked about enforcement and monitoring. I have been involved with a number of sites, although not at a particularly personal level. Firms differ significantly in their willingness to abide by planning conditions. Some firms seem to think that it is culturally right for them to breach planning conditions as much as possible. Others behave towards communities in a much more friendly way. We suggest that previous documented instances of planning abuse should be a material consideration when determining a subsequent planning application. In other words, the industry should try to put its house in order, which would suit it in the long run, in order to reduce the persistent lack of recognition of any form of planning conditions. If you asked me to give examples, I could go on and on. There are breaches in every direction. They relate to hours of work, the way traffic leaves sites and noise levels. All sorts of conditions are flagrantly breached on some sites. I emphasise that that happens only on some sites.

**Lindsay Addison:** Mr Barrie's question about monitoring would be easily answered if self-regulation by the industry ceased entirely and independent regulation were introduced. Air

monitoring is supposed to take place around the Douglas valley but, as my good friend Mr Thomson could tell the committee, that is not happening.

Mr Barrie raised the issue of employment. I will quote directly from a statement by our local member of Parliament, which was published in our local newspaper. He said:

"The nonsense about opencast bringing jobs into the area is a myth and has long been exposed as such. Anyone who thinks that opencast mining brings long term and quality jobs into our area is stretching the realms of reality to its limit.

Opencast mining in the Douglas Valley is singularly the greatest threat to jobs and prosperity in the District."

That is how our local MP saw the situation at the turn of the millennium. The situation has not changed in our valley. I am led to believe that the gentleman is now a consultant to the industry. To me, that says it all.

**Lawrence Fitzpatrick:** My father worked in the coal pits for 46 years, and his father worked in pits before him, so we have a strong affinity with coal, especially deep-mined coal. Twenty years ago, there were 191,000 deep coal miners in Britain; now there are just over 5,000. The industry seems to base its arguments on energy need, but this time last year four mines in the big mining complex at Selby closed. The unions co-operated with the employers on retraining and so on, and the closures were accepted. Over the past week, I have listened regularly to the news. If BBC television is to be believed, the number of jobs in opencast has grown to 3,000 this morning. However, the table that we have produced, which is based on figures from the Coal Authority, shows that the actual number is 1,300. There are no deep-mine jobs in Scotland.

Over the years, when operators have walked away and there has been some form of restoration—I do not think that the restored landscape looks like the original landscape—there has been no real evidence of inward or other investment in the areas concerned. It is not a case of people saying, "It is all done—here are the new jobs." In areas such as East Lothian, companies that require clean air say that they will walk away if opencast mining takes place.

Scotland is too small a country, and the coal is located in too tight an area—across the central belt and edging into Dumfriesshire. It is not like Western Australia, where there might not be anyone living within hundreds of miles of some opencast mines. I have stood at Greengairs and watched a slag heap literally come up to somebody's back garden, such is the way in which the meterage requirements are interpreted. No one should live under those conditions. I sincerely hope that we find substantial opencast coal

reserves at Morningside or Cramond, and we will see whether the same happens there.

**The Convener:** Mr Cronin has a point to make. I ask him to keep it very short.

**Thomas Cronin (Douglas Community Council):** The Douglas ward is a good example when it comes to the point about jobs. A distance of 5km applies to opencast, yet we have the third highest male unemployment level in the whole of South Lanarkshire. How are the two compatible?

**Scott Barrie:** I want to return to a point that was made about the inconsistent use of planning enforcement powers. Perhaps I should mention that my father was born in the village of Douglas Water, so I know the area very well. Do you have evidence that it is not just the enforcement of planning regulations that is causing a problem, but the inconsistent use of the currently available planning powers, with different authorities using them in different ways as they either grant or refuse permission for opencast developments? Perhaps more important, the authorities might not be vigilant enough sometimes in applying the conditions rigorously.

**Lindsay Addison:** One company has applied to South Lanarkshire Council and has had 100 per cent success. In the same valley, another company applied during the past 10 to 20 years, but it was turned down. To me, that says it all. There are inconsistencies. If the planning policies, from the European level down to the level of local authorities, were adhered to throughout the process, there would be no inconsistencies. However, there are inconsistencies, particularly in South Lanarkshire.

**Ann Coleman:** That point is relevant everywhere. There is a perception that, if an application for opencast is submitted in North Lanarkshire, it will be successful—it will happen—regardless of anything. It is possible that there is something of a postcode lottery for approvals and controls; that also applies to developers. If there was a tighter system, which was more effectively policed by the local authorities, everybody—the developers and the communities that have to live with opencast—would find themselves on a more level playing field.

**Cathie Craigie:** That line of questioning takes me on nicely to the separation distances that are proposed in the draft SPP 16. Opinions vary. The members of SOOT view the proposed separation distances as one of the most important alterations to the guidance. Scottish Coal points out that having sites within the proposed distance is

“likely to pose a threat to the amenity of a community”.

What do people in the communities feel about the impact of the proposed change on them?

**Ann Coleman:** I will explain the experience of living at Greengairs, where there is such a limited barrier between the opencast landfill site and the community. There is no space for odours, dust and noise to be dissipated. Without a good distance, those are all brought right into the community. Strangely enough, the landfill operator said a few years ago that one of the reasons why it would never look at another site in the UK equivalent to that at Greengairs was that it would never work as close to a community again.

As Dr Munro will explain, there is no monitoring, so the dust goes straight into the community without an area for it to be dissipated in. That leads to health problems.

**Cathie Craigie:** How close is the site?

**Ann Coleman:** We have had sites that are virtually at the back door of some houses. You made a point about people not sticking to planning consents. Contractors once worked right round the garden of one house—without planning permission, it must be said—on a holiday weekend. They went right round the garden, which was left on a precipice. That is how close the sites can be.

11:00

**Lindsay Addison:** I should draw your attention to some of the information that was presented to the committee today. I think that it is relevant.

**Cathie Craigie:** We have looked at the pictures.

**Lindsay Addison:** I ask members to look at the diagram that I presented. I do not mean to sound ridiculous, but you should also look at the diagram that I had to add at the last minute. All the pictures are relevant.

With regard to the 500m limit, there has never been such a determined distance from communities in the Douglas valley. You can see from the pictures of the site at Dalquhandy that the situation was exactly as Ann Coleman described it. The area that was worked came right up to people's back gardens. In the past three years, a working site was applied for in Glentaggart, which is just a stone's throw from the village of Glespin. Henry Thomson would be able to tell you more about that. The diagram gives you an idea of the impact that such applications will have. We are within the 5km range, and all that is going on in the one valley.

I draw your attention briefly to the diagram that I slotted in at the back. I included it because the community council had an approach yesterday from a wind farmer. The Douglas valley was home to the first landward wind farm in Scotland. Three other large-scale applications and one small-scale application are now coming into the valley, all in



the same area where the coaling is supposed to be. Somebody will have to tell me where the energy policy is in all that and where the minimum distances and cumulative impact kick in. I suggest to the committee that our situation is a fine example of exactly what minimum distance and cumulative impact issues demonstrate.

**Dr Munro:** I am concerned about the present planning guidelines and the planning proposals, which retain the concept that a distance can be reduced or increased depending on local circumstances. SOOT feels strongly—I shall try to explain why—that the one amendment that we would most like to be made to SPP 16 is the inclusion of a minimum distance. Without getting too scientific, I would like to spend a bit of time explaining the reason for that. When one talks about the impact on a community, one is talking about visible impact and about noise—against both of which something can be done to try to mitigate the effect—and about air quality. There are only two ways of reducing the impact on air quality; one is to reduce emissions on site and the other is to increase the separation distance. There is no mitigating way of reducing air quality impact without increasing separation distance.

One of the biggest problems that the community faces is the question of overburden bunds. Almost by tradition, those are placed near communities, so huge operations are taking place 100m away or less, under the present guidelines, with the production of large quantities of diesel emission particles. One of the radical differences between opencasting and any other form of activity is that the ground is being moved. So much more soil and overburden is being moved to get at the coal that the diesel emissions on those sites are astronomical.

I accept the fact that no medical evidence is available, in spite of repeated requests for research to be carried out, to give an accurate assessment of the impact, but one can talk anecdotally and say that we know that emissions from motorways have a profound effect on the cardio-respiratory health of people who live in the vicinity of motorways. What has not been properly appreciated is the fact that the diesel emission from an opencast site is substantially greater than that which is produced at any one point on the M8, for example. That is a major concern to communities and the only way in which it can be resolved is by having a fixed minimum separation distance.

**Donald Gorrie:** You seem to think that the phrase “small groups of houses” is ambiguous and that, while it is well intentioned, it might not achieve the right result. Will you clarify your view on that?

**Dr Munro:** You will recall that NPPG 16 said that a community was a group of 10 houses and

that anything less than that was not a community. My concern is that, by changing that fairly rigid definition and leaving it to the local authority to decide what a community is, the Executive is encouraging a situation in which groups of more than 10 houses will not be seen as a community. I suggest that the paragraph should say that it is for local authorities to decide whether a collection of fewer than 10 houses is a community.

**Donald Gorrie:** Your suggestion would mean that 10 or more houses would definitely be regarded as a community and that the council could decide whether a smaller number of houses would constitute a community but would be unable to state that a collection of more than 10 houses was not a community.

**Dr Munro:** Exactly. That is what is in NPPG 16.

**Lindsay Addison:** My community council discussed this point last night. Our definition of a community is land on which there is human occupancy. In some of the cases that we are discussing, a house is sitting on the very edge of the boundary and, as Dr Munro said, there is a bund right up to its back gate.

Any piece of land that is occupied by more than one individual is a community.

**Mary Scanlon:** I would like to ask about the 5km radius proposal. Dr Munro and Mr Fitzpatrick, from Scotland Opposing Opencast, expressed concerns about the possibility that the Scottish Executive’s policy could lead to there being consecutive developments on the same site over a prolonged period, which could have a cumulative effect on communities. Could you clarify that point?

**Dr Munro:** There are two forms of cumulative effect. One concerns a situation in which there are a number of sites functioning simultaneously and the other concerns an on-going impact. Our concern is that, whereas SPP 16 takes consideration of that with regard to extensions, it does not take consideration of that with regard to repeat applications in the same locality. The suggestion is that handling the two in the same way would be a more equitable way of trying to control applications that were rolling on, one after the other. I realise that, at the end of the day, no planning policy that is not simply a broad framework can deal with every situation, but the issue that you ask about is something that needs to be addressed in the framework that we are discussing.

**Mary Scanlon:** Like others, you are saying that, once a site has planning permission, the 5km rule means that there is likely to be greater development on that site.

**Dr Munro:** Yes. SPP 16 recognises that extension applications have to be treated

differently and we are saying that an application in the immediate vicinity of a development should be treated as an extension.

**Linda Fabiani:** In your submission, you talk about the fact that communities do not get involved in the process at present. It strikes me that that relates to an issue about the public agencies letting people down. Ms Coleman said that, often, the developer will speak to members of the public but that it is difficult to get hold of someone from the planning department or SEPA.

That leads me to wonder whether the change to planning that we are discussing will make a great difference if we still have a culture in which councils and public agencies do not interact with communities and if we are left with the resourcing issue that we have discussed. Do you think that the change that we are discussing will help the situation or must it be regarded as only part of a bigger revision of the planning process?

**Ann Coleman:** It must be part of the bigger story. We really need to change the attitude. We were promised social and environmental justice. If you are to pursue your policies of social and environmental justice, the whole planning system needs to be looked at in a different light. The change is only one step along that route.

**Lindsay Addison:** A third-party right of appeal will have to be an extension of this policy, with the possibilities that third-party rights of appeal have in other parts of the world. That would help the policy to be better worked and more workable within the bigger remit of the planning process.

**Lawrence Fitzpatrick:** It is important to get this particular block of planning policy promulgated at the earliest opportunity. I still do not think that it is as robust as it could be, but it is a lot better than what we have at present. There are other ways in which to improve the planning process, but we need something in place so that, when planning officers receive applications, there will be guidelines that they will have to follow, which will be more robust and give greater protection to communities. We all want to create the perfect world tomorrow, but that is just not possible. This is a good step. In West Lothian, draft guidelines are being used as the test bed for assessing an application, although that may not be the case in other authorities, as the law is a bit ambiguous.

I was a local authority councillor for some years. In my view, planning is an under-resourced function, although it is a very important function in a community. We need more expertise, especially for dealing with environmental impact assessments, for example. Planners are not experts on the wind, on public health, and so on. The process will work if there are much bigger and better-resourced planning departments. Planning

officers throughout Scotland are stretched to the limit in dealing with everything that they have to deal with at present. Major, major stuff is involved and, unless there is an officer who is an expert on mineral planning, it will be extremely difficult.

**Christine Grahame:** In June 2002, the Transport and the Environment Committee published a report that dealt with the health issues. At that time, the evidence was that the Executive recognised the various uncertainties from US studies—you said that much of the evidence that you have on health issues is anecdotal—and our colleagues in the Scottish Executive Health Department endorsed the view of the Committee on the Medical Effects of Air Pollutants, a UK advisory board, which recommended:

“These uncertainties need to be addressed by further research”.

Has further research been undertaken by the Executive into the health effects of the bunds’ being so close? If not, why not, given the fact that a committee of the Parliament endorsed the need for such research three years ago? Can you comment on that?

**Dr Munro:** I have a one-word comment: no.

**The Convener:** Christine Grahame might want to pursue that issue with the minister when she comes before the committee next week.

**Christine Grahame:** I think so. Yes.

**The Convener:** I thank the panel members for attending the meeting. Your comments have been helpful. I am also grateful to SOOT for sending us its written submission in advance of the meeting.

I suspend the meeting briefly to allow for the changeover of witnesses.

11:14

*Meeting suspended.*

11:18

*On resuming—*

**The Convener:** I reconvene the meeting and welcome the third panel of witnesses. I am especially pleased that David Brewer is able to join us because, until a short time ago, he was stranded at East Midlands airport. He is the director general of the Confederation of UK Coal Producers—otherwise known as CoalPro. Niall Crabb is the director of Scottish Coal, and Ian Wilson is the director of mining projects and property for the Coal Authority. Thank you for joining the committee this morning.

I begin by asking you about your concerns over the presumption against opencast mining. Broadly

speaking, the proposed changes from NPPG 16 are minor and the new, proposed SPP 16 could make little change to the existing planning guidance. However, you have expressed concerns about the presumption against development and I would be grateful if you would expand on them.

**David Brewer (Confederation of UK Coal Producers):** Our concern is that, since the presumption against development was introduced in England in 1999, the industry has been driven towards extinction. Output in England in 1999 was about 7 million tonnes a year, which is about the same as it was in Scotland then and about the same as it is in Scotland now. Output in England this year will be well under 3 million tonnes and, in 2004-05, not a single tonne and not a single site will receive approval in England. That is extinction. The word “decimation” is much misused—it means to cut to a tenth—but it is not misused to describe the impact of the presumption against development on opencast output in England, because that is what is happening.

**The Convener:** We have heard evidence from Friends of the Earth, and have written evidence from a number of bodies, that the presumption against development will not prevent opencast applications from being approved. If that is the case, perhaps the reduction in coal production in England and Wales has been due not solely to the introduction of the presumption against development, but to the quality of applications and whether they pass a community-benefit test. It is surely in coal producers’ interests to ensure that their operations go some way to address communities’ concerns.

**David Brewer:** Absolutely. We have no problem with the two tests in the draft SPP 16 as they stand; our problem is with the fact that the tests are preceded by the term “presumption against development”. When the presumption was introduced in England, our opposition to it was muted because we thought that we could work with it, but that has not proven to be the case and the industry is being eliminated.

I am sure that you are aware that we have conducted quite a campaign about the draft SPP 16. We have not done that without reason; we are genuinely seriously concerned about the threat to the industry’s future, because the evidence from England is pretty conclusive: extinction is imminent. I agree that the words in the draft SPP 16 do not suggest much change from NPPG 16, but they turn the normal planning approach on its head. In general terms, the planning legislation in England and Scotland has a presumption in favour of development. You might or might not agree with that but, across the piece, there is a general presumption in favour. Why single out opencast mining, which is essentially a temporary activity,

when any other form of development will, to a great extent, have permanent effects and not have to go through the test of a presumption against development?

We are quite happy with the tests as they stand; the issue is the way in which they are preceded in the draft policy by the statement that there should be a presumption against development. The proposed draft is not a tidying-up exercise; it takes the whole of planning policy and turns it on its head.

**The Convener:** Are you convinced that we can compare the implementation of the presumption against development policy in England and Wales with its potential implementation here in Scotland? I ask that for a number of reasons. My understanding is that the reliance on gas for electricity production in England and Wales is different. It may well be that there is not quite so much demand for coal at the moment, although I appreciate that we export coal from Scotland to England and Wales. I would be interested to hear your comments about that.

I would also be interested to know whether there is a difference between Scotland and England and Wales with regard to the sort of areas where coal is located. Not all the coal in Scotland is close to conurbations or settlements. It is quite possible for opencast activities to go on in Scotland but not to impact greatly on local communities. My understanding is that the situation is slightly different in England and Wales, where the coal tends to be concentrated near conurbations.

**David Brewer:** I will deal first with the question whether coal output in England has fallen because of the lack of a market and a greater level of gas generation. The presumption against development was introduced in 1999. Coal burn at power stations in the United Kingdom has increased by more than 20 per cent since 1997. There is no problem of a lack of demand for coal. The dash for gas took place in the early 1990s, but since then, coal has been cheaper than gas. The switch from gas to coal has not taken place for no reason. As a consequence of that increase in demand, this country now imports more than half the coal that it uses. It follows that a presumption against indigenous coal production, whether deep mined or opencast, is a presumption in favour of imports. The demand for coal is just as high in England and Wales as it is in Scotland.

There is a presumption against permission being granted for opencast in England, but there is no such presumption in Wales. That does not exist in Welsh planning guidelines, which I think are called TANs—technical advice notes. Opencast output in Wales has fluctuated. It has fallen slightly but, given some recent approvals, it is likely to

increase over the next few years to a constant level of around 2 million tonnes a year.

You asked about the location of opencast or shallow coal reserves in England compared with the location of such reserves in Scotland, and the extent to which they are adjacent to communities. There are some very large shallow coal reserves in England, comprising several hundred million tonnes, which is several times the extent of the reserves that exist in Scotland. In a number of areas, those shallow reserves lie adjacent to communities in some quite densely built-up areas.

It is equally true that, in many other areas, the reserves do not lie in such locations. There are significant coal reserves in the old coalfield areas of Derbyshire, for example, which lie quite close to communities. It is quite difficult for operators to find sites to work there. The same is true in parts of Yorkshire, where it is difficult but not impossible to find sites. There are large areas in Northumberland and County Durham, to the east of the coalfield areas of Yorkshire and the midlands, as well as in Leicestershire and north Warwickshire. Generally speaking, I do not think that those areas are any closer or more adjacent to communities than they are in Scotland.

**The Convener:** Since the introduction of the presumption against development, have applications in England been made for sites that are easily accessible and close to conurbations, or have they been made for less accessible sites? CoalPro's written evidence highlights the need for easy access—you stated that there was a need to allow applicants and developers to have easy access to sites. On the other hand, those developers who are willing to go a little further away from conurbations or communities might find that their applications are approved, as they would meet the community benefit test.

11:30

**David Brewer:** There has been a mixture of applications. There have been applications for a number of sites in areas and locations that I would not have thought are particularly adjacent to communities or particularly likely to cause damage or have a serious environmental impact. I have also seen a number of sites for which applications have been made that are quite close to communities, and it has not surprised me that they have been rejected. However, that is how the planning process works. I do not think that there has been a concentration of applications in areas that are close to built-up or conurban areas.

**Scott Barrie:** In answering the convener's questions, you concentrated on a similar presumption against development being the main cause of the decline in opencast output in

England. Are there any other reasons that you have not mentioned that may account for that decline? In response to a question from Alex Fergusson, Mr McLaren from Friends of the Earth Scotland said that we should reduce coal as a fuel for generating electricity and favour renewables. Is there a future for coal-fired generation in the United Kingdom, particularly if we embrace such things as clean-coal technology?

**David Brewer:** Yes. From 1997 until around 2002 to 2003, world coal prices were extremely low, which had an impact on the number of sites that could be worked economically to compete with imports. That might have been a reason for the fall in the number of applications, but plenty of applications were still made to work sites. Those applications would not have been made if the developer did not think that he could work those sites at a competitive cost and sell his coal at a price that was competitive with the price of imports.

You ask about the wider issue. CoalPro is not against any other form of energy—it is pro-coal within the context of a balanced energy policy. In looking to the future, I do not see how this country's energy demands will be met in a low-carbon future without renewables, without addressing the nuclear question or without clean coal. No one technology will get us there—not by a mile. All technologies will be required.

**Niall Crabb (Scottish Coal):** I would like to add something to help members a little more with renewables. As a coal-producing company, we obviously realise that coal mining and coal burning will cease at some stage in the future. Either coal will run out or the environmental or amenity constraints will be such that we will simply be unable to produce coal. The trick is to plan for the change from where we are now to where we need to be in the future.

Our company's main focus is on biomass, which is carbon neutral. Broadly, I am talking about timber and timber derivatives—whether willow, Scottish forestry, miscanthus-type grasses or whatever. Biomass can be blended with coal now. The biomass element will be carbon neutral and there will be an immediate reduction in SO<sub>x</sub> and NO<sub>x</sub> emissions—that is, SO<sub>2</sub> and NO<sub>2</sub> emissions. Therefore, there will be an immediate renewables benefit. That can be done now in our existing coal-fired power stations such as Cockenzie and Longannet, and that is what we are doing.

To move from where we are now to where we want to be—that is, 100 per cent biomass burning—will require the development of new biomass-burning power stations. Even if we started that development today there would be a three, four or five-year lead-in, so coal has a valuable role to play not only in keeping the lights

on and the energy flowing to homes and industry but in getting us over the hurdle of the development of biomass. Scottish Coal entered into the first commercial biomass-burning contract with Scottish Power and Scottish timber has been going in, along with Scottish coal, at Cockenzie power station. We are setting up Longannet to do the same thing.

The maximum amount of biomass that we can put in with the coal is 10 to 15 per cent but, as Mr Barrie indicated, we are in a transition and coal plays an important part in that. The health of the coal industry also plays an important part. If we do not have the money to invest, we will not invest. The only other place that that money can come from is the public purse. I hope that that is helpful.

**Ian Wilson (Coal Authority):** As a representative of the Coal Authority I point out that we do not work coal because we do not have the power to do that. We are the administrator of coal for the nation and in certain aspects we are the regulator of the industry. Our duties include securing an economic and viable coal industry to be developed and maintained by those who are licensed to operate in coal. Beyond that, I am not here today to demonstrate the role of coal, other than to state facts that are, I think, obvious.

Less than 50 per cent of the coal that is used in the UK is indigenous. Scotland accounts for nearly 25 per cent of the UK's usage of and reliance on coal. Coal generates 35 to 36 per cent of the nation's electricity and can meet up to 45 per cent at times of peak demand. We believe that in the medium term coal and clean-coal technology, to which Mr Barrie alluded, perhaps combined with CO<sub>2</sub> sequestration, form the bridge to get the nation from where it is today to cleaner forms of energy production. We do not believe that that can be achieved without coal playing an important role in the security of the nation's energy supply.

I share my colleagues' concerns about the presumption against opencast mining because we have seen, as they have, the way in which the English industry's effectiveness reduced immediately after the introduction of the presumption against development in England. It is fair to say that we do not have a vested interest in coal, beyond the fact that we administer it on behalf of the nation. We fully support what the other members of the panel are saying.

**Scott Barrie:** In following up Mr Brewer's response to my question, I wonder whether it might be useful for the committee to get some information on the number of applications that were made and granted before and after the implementation of mineral planning guidance note 3—MPG 3—in the two or three years before 1999 and in the three years after 1999. That would answer some of our questions.

**The Convener:** It would also be helpful to get some indication of why applications were rejected.

**Christine Grahame:** I have a short factual question. The figures that I have show that in the financial year 1998-99, opencast coal production was just under 7 million tonnes in England and about 6.5 million in Scotland. The latest figures that are given in the table—you might have more recent ones—show production in England at about 5 million tonnes and production in Scotland at about 8 million tonnes. The total for England and Scotland in the 1998-99 figures is about 13 million, which is the same as the total for England and Scotland in the latest figures, although the biggest proportion is now in Scotland.

That leads me to a comment that was made by the previous panel, which mentioned a coal industry magazine that states that operators are drawn to sites in Scotland

"like iron filings to a magnet."

In other words, it is suggested that the more lax planning application procedure for opencast mining in Scotland simply moved the production of 3 million tonnes of coal from England to Scotland, producing the same overall figure. Will you comment on that?

**David Brewer:** I do not know that magazine's name and I do not recognise the article.

**Christine Grahame:** The magazine deals with opencast mining from 1998 to 1999.

**David Brewer:** That is not a magazine that exists these days.

**Christine Grahame:** The question is whether production simply shifted and, if so, whether it shifted because planning applications were easier here. I cited the magazine because the previous panel referred to it.

**David Brewer:** I do not think that production shifted. As you said, from 1998 to 1999, the figures were 7 million tonnes in England and 6.5 million tonnes in Scotland. In 2004, the figures were about 2.7 million tonnes in England and about 7.5 million tonnes in Scotland. The amount in Scotland has increased, but the increase is comparatively slight. Output in England has collapsed. Those 2.7 million tonnes last year will become 1.5 million tonnes this year, 500,000 tonnes the year after and then nothing.

**Christine Grahame:** My point is that the proportion is shifting from England to Scotland, where the figure is higher each year.

**David Brewer:** Of course it is.

**Christine Grahame:** Does that correlate with the fact that we appear to have more liberal planning laws for opencast mining, because

England has a presumption against it, which you have said is the reason why you cannot mine there?

**David Brewer:** The reason is not that Scotland has more liberal planning laws but that laws in England have eliminated the industry there. Our point is that introducing in Scotland similar laws to those in England will similarly eliminate the industry here.

**Christine Grahame:** So no displacement is taking place.

**David Brewer:** No. SPP 16 gives percentages and Scotland's percentage of UK opencast output has increased. However, the suggestion is somewhat disingenuous, because that percentage increase is due not to a big increase in output in Scotland, but to the collapse in output in England. If the output in Scotland stays the same, it is not surprising that the percentage should increase.

**Niall Crabb:** Although England has a presumption against opencast and Scotland does not at present, several elements of NPPG 16—the existing guidance—are considerably more restrictive than MPG 3 in England. For example, MPG 3 does not specify separation distances—cordons sanitaires—whereas they exist already in Scotland. Planning regulations are not more lax in Scotland. As David Brewer says, a considerable number of permissions have been lost in England as a result of MPG 3. Coal is available in Scotland, so people will try to mine it and meet the markets, but the situation is pretty much the same with wind farms and wave power. Scotland has more wind farm applications than England or Wales.

**Ian Wilson:** From the authority's point of view, I do not know whether a conscious shift has been made to producing more opencast coal in Scotland. The English firms have not moved into Scotland to mine more coal. A subtle and different answer may be that the Scottish companies are more efficient and effective and can capitalise on a market. The success of Scottish Coal and companies such as ATH Resources in capitalising on a market and exporting coal from Scotland to England is not the result of English producers coming into Scotland to work coal because that is easier here.

**Christine Grahame:** I did not say that. All that I am saying is that the accumulation of the two amounts produces the same UK-wide figure.

**Donald Gorrie:** You are hot on there being no presumption against opencast mining. The communities that opencast mining has affected adversely argue that the existing system makes an assumption in favour of development. Mr Brewer argued that that was normal for everything. Given that opencast mining is most unfriendly to communities, could we proceed without a

presumption for or against, but with tight conditions? Is there any way forward? I am not empowered to negotiate; I am merely exploring whether there is any merit in such an approach.

11:45

**David Brewer:** Yes. First, I take issue with the assertion that opencast mining is the most unfriendly operation. Given the comparative environmental impacts of a number of developments, if you are to have a presumption against opencast mining, why not have one against landfill? Why not have one against motorways? Why not have one against many forms of mineral working? Why not have a presumption against lots of things? Their environmental impact will be as great as that of opencast mining. What is more, their environmental impact will, to all intents and purposes, be permanent, while that of opencast mining is temporary.

The industry and communities would all appreciate more certainty and consistency across the piece. As an association, we are very much in favour of a strong monitoring and enforcement regime. CoalPro members have their own charter, and CoalPro has its own environmental code. CoalPro has negotiated a code of practice with the English Planning Officers Society, which goes through the whole range of issues. It covers not just operations, but the pre-application stage, what an environmental impact assessment should be, pre-application discussions with communities, the planning application itself, the operation of the site, restoration and aftercare issues, and the question of financial guarantees.

There are various ways in which a code of practice can be applied. It can either be built into the guidelines or be an annex to them, or be built into the conditions of approval; we do not have a preference. Scottish Coal can speak for itself, but it expressed a preference for a different approach using compliance plus. However, such approaches are the right way forward to provide certainty and consistency for the industry and communities.

**Niall Crabb:** We are great supporters of the planning system. We have made strong comments supporting changes to the development plan system to allow community involvement at the earliest stages. The absence of their involvement was one of the major criticisms that were made by the community groups this morning. We fundamentally believe in working with communities and in getting plans on the table early. It strikes me that the community groups' major concern is that they do not feel that there is sufficient supervision or that sufficient action is taken by local authorities. In certain circumstances, they do

not feel that operators are playing the game as they should. That is incontestable, so we must solve that problem.

We have come up with proposals to address those problems. You could say that the presumption against opencast mining is not the right tool—that it is a sledgehammer to crack a nut—but it does not, as was confirmed this morning, address the real issue, which is that community groups do not feel that they are properly involved. They do not feel that they are listened to and, more important, they do not feel that action is taken where necessary. For instance, in East Ayrshire, which is heartland country for us, since 1999 seven formal objections have been lodged with the local authority about our activities. Four of those were found to be justified, two of which were at rail-loading depots and two at an opencast mining site. All four were resolved satisfactorily without the need for enforcement action. The story in south Lanarkshire is similar. The number of genuine complaints is very low, but it ought to be zero.

The reason why Scottish Coal has suggested compliance plus is that it has brought in an independent assessor, but he is not there to catch us doing something wrong. That is not the main issue, because the planning officer can do that. The real benefit of the independent assessor is that he watches for things that he thinks might be going wrong and reports monthly to the local authority. We pay for that; it is to our account. He comes every month and either says, "That's fine", or "I don't like the way that's going", and gets the enforcement officer or the planning officer from the local authority involved. I am sorry that I have gone on a bit, but the subject seems to be at the heart of concerns that have been expressed to the committee over the previous hour and a half. We think that compliance plus is perhaps a better way to address the issue than to take the risk of the presumption against opencast mining, which might or might not have the same effect in Scotland as it has had in England.

There is a consistency problem. In response to the first point that Mr Gorrie raised, the Town and Country Planning (Scotland) Act 1997 states that there is a presumption in favour of development where it is in accordance with the development plan. SPP 1, which is general planning policy, says that development should be allowed unless there are very good reasons why it should not be. A presumption against would be an inconsistent swing away from existing policy and is not, perhaps, the right tool in the circumstances in which the committee finds itself, which is that it is hearing concerns from community groups that they are not properly involved.

**Mary Scanlon:** Your answer has taken us nicely to the point that I want to raise. I want to give you

all the opportunity to raise your community-involvement credentials, because this morning there has been significant criticism of your community involvement. Mrs Coleman said that she could not get a meeting to see round an opencast mine and that opencast mines are not good neighbours. It was also alleged that environmental impact assessments are often inaccurate. That has certainly not built trust between communities and you as developers. We are running short of time, but could you outline briefly what you currently do? Have you not engaged the communities as you should have? What could you do to improve matters in the future?

**Niall Crabb:** Mrs Coleman's main complaints concern another operator, so clearly I have a different view of matters. We are suggesting that a modest rewording of SPP 16 ought to make it possible to get a consistent approach across the piece. Everybody should operate under the same guidelines and to the same high standards. We believe that we have high standards: okay, they could be higher, but we believe that we have high standards and that we should aim for that. It concerns us greatly if other members of the same industry, which may not be members of CoalPro, do not reach those standards, because we all pay the price. That is why I am sitting here today.

The previous panel said that the environmental assessment is carried out by an independent consultant, but paid for by us. That is absolutely right. Unfortunately, that is the way it is. We need to be able to choose the right consultant for particular problems. I believe that Duncan McLaren of Friends of the Earth Scotland stated that there should be a panel of environmental consultants who are qualified and approved or who meet standards to do environmental assessments, and that if the company could choose one of those people that would be a step forward. We are happy with that suggestion. Obviously, we need to have choice because one consultant will charge more than another, but if there is a panel that meets standards and the committee approves those who are on it, we would be very happy with that.

That leads us back to the final point that Mary Scanlon raised about compliance plus. I am not saying that the suggestion that we have made on compliance plus goes as far as you might like it to go. All that we are saying is that we have trialled the system at our St Ninian's site and we think that it works well. I believe that Fife Council also thinks that it works well and I believe that the communities in the area believe that it works well. If the system needs to be fine-tuned, that is okay, but SPP 16 could set that out unless operators are volunteering to do it. That is a material planning consideration.

The approach offers a legal way of building consideration of past performance into the planning system. It is very difficult in law to refuse a planning application because it is a cowboy application, but making past performance a material consideration would be a step forward.

**Mary Scanlon:** Do you accept that in the past, communities were not involved as they should have been? That factor has perhaps contributed to the need for the debate that we are having. How would you respond to Mr Addison, who described receiving wads of paper 4in thick that required technical expertise in geology, engineering or whatever to understand them? How can we inform communities and accord them equal standing in the consultation process, given that they are represented by volunteer community councillors, whereas you are surrounded by the expertise of the industry?

**Niall Crabb:** That is a fair point. I suppose that communities elect their political representatives to do the analysis for them. The professional officers in councils and their advisers do that analysis. Obviously this is not a matter over which I have control, but I was struck by Mrs Coleman's comment that she cannot speak to planning officers—

**Mary Scanlon:** Or to councillors.

**Niall Crabb:** That is a shame, but perhaps it is a local issue.

**Mary Scanlon:** I realise that the matter is not your responsibility, but I want to know whether you think that community involvement could be much better than it has been in the past and, if so, what you can do to help the process.

**Niall Crabb:** We are more than happy to talk to anyone, at any time, about applications. The suggestion that applications are always made just before a holiday does not have much credence, because a planning application might take 12 or 24 months to be determined—there is a huge gestation period. We should probably do more than hold two or three public exhibitions on three evenings in Douglas, for example. Perhaps we could hold seminars. Clearly we could not run a seminar that had an audience of 300 people, but it would be easy to invite various representatives to attend a seminar at which our geological or hydrogeological consultants could try to answer queries. Workshops or seminars might offer an approach to be taken during the gestation period.

In relation to the site itself, the development plan is a huge resource, which generates community involvement from day 1. It is the stage at which we define areas of search and local issues and at which the community can become involved, long before a planning application is made. With the greatest respect, I suggest that, through the

consultation exercise on the development plan process in Scotland and the review of the planning system, big inroads can be made into ensuring that communities are really involved, so that when a decision is made in circumstances in which an application is likely to be favourably received, the public know what is happening and we know what is happening.

**Scott Barrie:** I was going to ask about enforcement and monitoring, but Mr Crabb covered the subject extensively in his answers to other questions. Do witnesses have further comments about how operators could best be regulated by planning authorities, to ensure that situations such as those that the previous panel described are not repeated? I say in passing that the constituency that I represent is adjacent to the constituency in which the St Ninian's site in Fife is located, so I echo what Mr Crabb said about the importance of being regarded as a good neighbour. He described an example of very good practice, the adoption of which by the entire industry would prevent many of the complaints we have heard from arising.

**David Brewer:** The majority of the industry has made a great effort to involve communities over the years, not just in Scotland but in England—although that has not done us much good in England. Last year or the year before that, the Executive launched a consultation on monitoring regimes and fees in respect of mineral workings, to ascertain matters such as what the fees should be and who should pay. Our response was that the operator should pay. If an operation involves a burden on the local authority, it is right that the operator should pay. We are willing to pay—in fact, we want to pay—for proper monitoring to ensure that consistent standards are applied across the piece. If monitoring suggests that some action should be taken, it follows that enforcement should take place.

12:00

However, we have a difficulty. If we pay for the monitoring, it is seen to be ours. A similar thing happens with an environmental impact assessment: if we pay for it, it is seen to be ours and therefore perhaps not entirely unbiased. I really do not know the solution to that. It is a general problem across the whole of the planning field. I do not suppose that you would thank me if I were to say that an alternative is that communities should pay.

**Niall Crabb:** With compliance plus, the independent assessor invoices Fife Council, which then invoices us. The payment therefore goes through the council which, I think, satisfies communities that the person is, in effect, being employed by the council rather than by us. We just pay the bill.



**Ian Wilson:** I would like to add to what has been said in response to Mr Barrie. As a regulator, the Coal Authority fully supports proper and informed regulation of any mining operation. Our staff regularly inspect all operational sites. We have memorandums of understanding with the Health and Safety Executive, and we have agreements with local authorities, such that if our inspectors find clear breaches of planning or environmental guidelines, those will be raised with the operator and the regulating body at the same time. We therefore add to the regulation and welcome that regulation.

**David Brewer:** I think I said that CoalPro has an environmental charter. It has come to my attention on the odd occasion that an operator might have done something that was not in strict accord with the charter.

**The Convener:** That has happened once or twice in my constituency.

**David Brewer:** I do not believe that you have a CoalPro member operating.

**The Convener:** I think that H J Banks & Co Ltd might have been a CoalPro member.

**David Brewer:** Yes.

**The Convener:** That company breached regulations.

**David Brewer:** I remember the case and what was happening ceased immediately. It was not only local people or the local council who raised the issue with that company; CoalPro did too.

**Cathie Craigie:** I want to move on to discuss separation distances. SPP 16 says that particular attention has to be paid to separation distances—the proximity of workings to communities. I am sure that you heard the evidence that community organisations gave earlier this morning. SOOT suggested that changes to separation distances were the most important aspect and that we should go further than the document, in that 500m should be the minimum.

More important, we heard evidence from the communities themselves; in particular, Mrs Coleman, who told us how the quality of life in her community in Greengairs had been affected by the proximity of opencast mining.

To summarise the written evidence from CoalPro, it would be the end of the industry as we know it if SPP 16 were to go ahead. Will you share with the committee any further thoughts you have on that? How will the industry be affected? Can you substantiate your comments in the four paragraphs in your written submission?

**David Brewer:** On separation distances?

**Cathie Craigie:** Yes.

**David Brewer:** Evidence was heard that suggested that there is a large bank of permitted reserves in Scotland. That is true and it has, perhaps, occurred for a specific reason in that, on privatisation of British Coal, the successor companies were allocated a certain volume of reserves for which they had conditional licences under the Coal Authority. Those conditional licences expired at the end of last year, 10 years after privatisation. In order to decondition a licence, planning permission is required. Scottish Coal in particular went to considerable efforts to move its conditional sites through the planning process to obtain planning permission before it lost them, which would have left them open to others.

A number of those sites are very large. The output in Scotland is 7 million to 8 million tonnes a year at the moment. After the end of this decade, output will automatically and naturally fall away, because most of the large sites have been approved and the future of the industry beyond the end of this decade will depend on getting approvals for smaller sites. The problem with increasing the separation distance is one of geometry, because the separation distance eats into the sites and could sterilise quite a large volume of reserves. With a higher proportion of smaller sites, that proportional sterilisation will be much greater. In many cases, for a smaller site, taking coal out of the boundary will make the whole site unviable and will lead to even greater sterilisation of reserves. That is the point that I was trying to make.

What I cannot do is speak with the knowledge of where all the coal is in Scotland. I have a good idea, but I do not know the mapping of the reserves entirely. The Coal Authority may have better information than I have on that.

**Ian Wilson:** Could I comment on that?

**Cathie Craigie:** I was going to ask you to comment on that as well, Mr Wilson. As I recall, your submission stated that you would totally oppose that. Perhaps you could point me to the right page in your submission; I cannot find the place at the moment.

**Ian Wilson:** Oppose what?

**Cathie Craigie:** The increased separation distance.

**Ian Wilson:** In support of what David Brewer has said, we have carried out an exercise on the sites that are operational in Scotland as of today. I think that it is fair to say that at least 50 per cent of those operating sites—by which I mean viable sites—would be materially affected by an increase in the separation distance. At the very least, 25 per cent of the operational reserves would be lost. At worst, 90 per cent of the reserves would be lost,

and therefore the site would be lost. What Mr Brewer has said about sterilisation is true, even for the sites that we have today.

I also verify his point about conditional licences. All those conditional licences were granted for a 10-year period by the then secretary of state. They have expired, so they no longer have any value, sadly, to Scottish Coal.

Let me give our view on sterilisation. We have talked about the site boundary, but the site may embrace significant lengths of haulage road or rail links. Invariably, those have to come out on to main roads and main railway lines. If we look at plans of a number of the sites that exist today, we can see that they would be sterilised even further by the fact that, because the site boundary embraces the haulage road and the rail link, the opencast mining site would be even further from where it would need to meet a railway. Railway junctions are often next to communities. It is a fact of life that, throughout the UK, communities often grow up around railways and minerals.

I take on board all the points that were made this morning about locating bunding and site activities being too close to housing, but slavishly following guidance that states that there should be a 500m stand-off from site boundaries rather than from excavation boundaries would have a serious effect. We must accept that the site boundary will include land that is not operational land or land that provides the only access to the site.

The authority and I fully support SPP 16's statement that coal reserves should be removed prior to development. We will make—and, in many cases, have made—plans available to any local authority that identifies areas where shallow workable reserves exist. We cannot take a view on viability, because that is a matter for the operators. The local authority can then decide whether it wants to remove reserves prior to allowing any development. If those reserves are found in shallow mine workings that might give rise to water, gas or spontaneous combustion problems, removing them prior to the permanent development of the surface would have huge benefits.

I have to say that, although I entirely support the concept behind your document, it appears to contain a contradiction. You say that you do not want any coal to be extracted within 500m of a community, but any extension of that community will most likely happen next to it, not 500m away from it.

**Cathie Craigie:** I should point out that this is not our document. We are simply taking evidence from you on a document that the Scottish Executive has produced.

**Ian Wilson:** I beg your pardon.

**Cathie Craigie:** Will Mr Crabb comment on this matter? After all, instead of saying that this is the end of the world as we know it, his organisation has come up with a compromise.

**Niall Crabb:** My colleagues are the custodians, as it were, of the coal reserves and although it would be nice to get all the coal out of the ground, we are more pragmatic and simply want to reach a solution.

I know that there has been some discussion about whether the separation distance should be 100m or 500m; however, I have to say that we do not have a problem with 500m, if that figure is felt to be comfortable. We also do not have a problem with taking that 500m from the working face. After all, big machines can make noise extracting rock from the ground, so such activity should happen away from the community.

That said, we are slightly concerned that measuring the distance from the boundary instead of the working face will have too much of a blanket effect, because what happens within that 500m cordon sanitaire will be the subject of the environmental assessment. I quite agree with Ann Coleman that it is patently unacceptable for a proposed major overburden bund to come up to people's back gardens. However, I am sure that most people would accept the creation of a pond and tree planting within the site boundary. If we decide that we do not want big overburden bunds, we need to find a way of finding what is or is not acceptable instead of simply introducing a blanket measure. That is what I was trying to define in our submission, although I might not have covered it all in my response.

It might help the committee if I point out that the environmental assessment is supposed to define what will or will not disturb communities. A bit of tree-planting will not disturb anyone, whereas an overburden bund will. We accept the need for a mechanism that ensures that, in general, nothing major will happen within 500m.

**Cathie Craigie:** Earlier, you said that the local residents of—I think—St Ninians in Fife and the company have come to an agreement and produced a protocol. What is the separation distance between the boundaries of that site and housing?

**Niall Crabb:** I believe that the separation distance from Kelty is more than 500m, but some groups of houses are closer than that to the boundary.

**Scott Barrie:** Under the current planning guidance, a community is defined as a group of 10 or more houses. However, under the proposed SPP 16, the definition of communities becomes "small groups of houses". Are you satisfied with that definition? If it were adopted, what would be

the implications for the future of opencast coal developments in Scotland?

12:15

**Niall Crabb:** That is one of the provisions that we would obviously prefer to remain as it is in NPPG 16, but we can live with that definition as, clearly, we want to be good neighbours. There is little point in trying to bulldoze your way through life—pardon my use of the phrase. Life is too short for that. We want to try to resolve problems. If we can take on board the effect that the development will have on smaller groups of houses, we will do that. However, while I am not saying that we should override the considerations of groupings of only one or two houses, I think that someone should be charged with assessing whether the development will have an effect on them, whether it can be dealt with and what the feelings of the residents of those houses are. If those factors are taken on board, we can live with the provisions in SPP 16.

**David Brewer:** It is not the definition that is at issue. We need to ask what the likely impact of operations is on a community, whether that community is made up of one house, 10 houses or 100 houses. There should be a separation distance from even a small number of houses if the impact of operations in that area is likely to be significant. There will be small clusters of houses on which the impact of operations is not going to be significant. In those cases, the considerations relating to separation distance would not necessarily apply. The real issue is to do with the level of the impact, which should relate to the environmental impact assessment.

**Linda Fabiani:** I have two questions, the first of which is for Mr Brewer and Mr Wilson. Earlier, you said that the presumption against planning permission for opencast developments in England had the effect of almost finishing the industry. If a level playing field were put in place again—either by Scotland introducing a presumption against or by England abandoning it—do you think that the work would disperse throughout the UK again? Are you saying that, if Scotland introduces a presumption against such planning permission, when new applications are required—further down the line, because there are reserves in existing sites—we will end up importing all our coal and that there will be a free-for-all in Wales unless it also introduces a presumption against such planning permission?

My second question is for Mr Crabb, although I do not know whether he will be able to answer it or will feel comfortable doing so. Earlier, it was made clear that communities feel that they have been treated poorly by the industry and that they have been ignored by the public agencies and local

authorities. Do you have a feel for how detailed the local authorities' analysis of community benefit is? How hard a time do you get from local authorities when you submit planning applications? Can you tell me what the planning application success rate is in Scotland?

**David Brewer:** On the notion of there being a level playing field across the UK, if a presumption against planning permission for opencast developments were introduced across the UK, we would expect that, by 2010—because the effect would not be felt tomorrow—we would have a minimal industry producing between 1 million and 3 million tonnes a year, compared with the 12 million tonnes that were produced last year and the 21 million tonnes that were produced at the industry's peak.

If the presumption against such developments were removed in England, I would expect that output would eventually rise to a sustainable, environmentally manageable level of about 5 million tonnes a year. That is quite important for wider energy policy issues. The Confederation of United Kingdom Coal Producers represents the deep mining companies as well as the opencast companies and knows that we all want to have a stable opencast coal industry in the UK of about 12 million tonnes a year. In the longer term—in 10 years' time, say—bearing in mind that the larger sites in Scotland are likely to be worked out over the next few years, a sustainable level would be 5 million tonnes from Scotland, 5 million tonnes from England and 2 million tonnes from Wales. Does that answer the question?

**Linda Fabiani:** Yes.

**Niall Crabb:** I will move on to your more difficult question. You asked whether I knew what the planning application success rate in Scotland is. I cannot answer that, because I do not hold all the statistics. The local authority representatives from whom you will hear later or the Executive might be more able to help you.

As far as my company is concerned, we have had a few high-profile refusals. The issue of repeat applications has been mentioned. We made a repeat application in relation to the St Ninians site that we keep harping on about. Our initial application was refused for reasons that we were able to overcome. The main reason for that refusal was that, at the time, there was concern about the effect that our plans might have on the proposed Hyundai factory at Halbeath. The problems were resolved and we resubmitted an application for a smaller site at St Ninians, which has become a relative success. We have recently had a refusal in Midlothian, which we are having a think about. We have not appealed any decisions on opencast applications along the way. I am trying to give you a flavour of our planning application success rate.

You asked about the role of the public agencies and whether the public feel let down. Every so often, we get a fairly hard time, but we tend to get a hard time from people who feel passionately about one of our proposals. They are genuinely concerned about something that might be happening at the bottom of their garden that they do not understand. In such cases—

**Linda Fabiani:** Excuse me for interrupting you. You might have picked me up wrongly, or perhaps I did not put my question properly. What I want to know is how hard a time you get from the planning authorities when you are justifying the community benefit, for example.

**Niall Crabb:** Oh, I see. We think that we get a fairly hard time from the planning authorities, but only to the extent that they are professionals who are doing their jobs. I used to work for a local authority, so I understand what is required. Standards vary across the authorities. Some are more aggressive than others in seeking to resolve issues. Fundamentally, people want to do a good job. If there is something wrong with an application and the planning authority can think of ways of making it more acceptable, we would want to take on board its suggestions.

Authorities are extremely keen to ensure that communities are not disadvantaged by our proposals and that they can get something that is highly beneficial out of them. That might take the form of road improvements or contributions to community trust funds. For every tonne of coal, we give 25p to a community trust fund. That money for local good works would otherwise come out of the public purse. Our activities offer a range of benefits. Our use of the railway in Ayrshire keeps open lines on which passenger trains can continue to run. If those lines were not used by freight trains, they might well not be there. Authorities push us to see how much they can obtain, just as they push housing developers with a view to obtaining planning gain, community benefit and so on.

**The Convener:** I have a final question for you. This morning you have sought to impress on the committee the need for the community to trust the coal industry and to engage with it. With that in mind, I wonder whether this morning's media coverage of the issue, particularly the coverage of Scottish Coal's news release suggesting that those people who object to opencast mining are simply nimbys, is factual or will generate a wider understanding between communities and the opencast industry. As someone who supports opencast mining where it is appropriate, my view is that that will greatly undermine the cause of opencast in Scotland. On behalf of my constituents, I resent the view that the people in Greengairs who objected to the opencast

proposals because they wanted to protect the graves of the dead from the Stanrigg pit disaster were being nimbys.

**Niall Crabb:** I do not know whether you have picked up wrongly something that I said, but I have certainly not suggested that that is a nimby attitude; I have said several times that we accept that the community has genuine concerns. That is why we are trying to meet them and have made a number of suggestions.

As I said, we accept the vast majority of the draft SPP 16—we would not like a lot of it in an ideal world, but we are more than happy to accept it. We have high standards and we want to raise them higher. We are demonstrating that we have already put into effect the best practice possible at one of our sites and we are happy to roll that out at our other sites.

We suggest to the committee that if there are any areas of the country where you and the local authorities are not receiving the kind of response that you ought to receive, best practice could be rolled out there as well. As a company, we have no problem with imposing higher standards in areas that are not achieving the standards that you think should be achieved. We would fully support that.

**David Brewer:** I do not know the particular press release that the convener spoke of, but I understand the point that she makes. I have had—as we all have—plenty of occasion in my life to oppose applications for planning permission by developers. I do not class myself as a nimby just because I have opposed such applications.

However, in that wider context, it is relevant to look at the alternative. I said that it is the industry's ambition to continue to produce about 12 million tonnes of coal a year in the UK. I also said that if the presumption against planning permission were to be introduced in Scotland and Wales, there would be an on-going industry of 2 million tonnes a year. That means that 10 million tonnes of coal a year would be imported and not produced in the UK. Where would we get that coal from? Sure, the traditional suppliers—

**The Convener:** With all due respect, those issues relate to other discussions and arguments that we have had this morning and not to the issue that I raised about the need for greater understanding between the opencast industry and communities so that they can live in harmony and not at war, as is the unfortunate situation in a number of communities in Scotland.

I thank the witnesses for attending this morning and for their written submissions to the committee in advance of today's meeting. I suspend the meeting briefly to allow for a changeover of witnesses.

12:27

*Meeting suspended.*

12:29

*On resuming—*

**The Convener:** I welcome the fourth panel of witnesses, who are our trade union colleagues. We are joined by Martin Gaughan, the acting regional secretary of the Transport and General Workers Union; Nicky Wilson, the Scottish general secretary of the National Union of Mineworkers, Scottish area; and Stephen Boyd, the assistant secretary of the Scottish Trades Union Congress. Thank you for joining us and for sitting through the previous evidence-taking sessions.

I begin by asking you about the presumption against opencast mining, which has generated considerable discussion this morning. What are your concerns about the presumption against opencast mining from a trade union perspective?

**Nicky Wilson (National Union of Mineworkers):** The position of the trade unions is based on the facts that we have in front of us. The presumption against opencast mining could be the death knell of—or at least lead to a massive cutback in—opencast production in Scotland. That is our fear. The only facts that we have to support that assertion are the English figures, which we have included in our written submission to the committee.

We also represent the local communities because we represent the workers who come from those communities and who now work in opencast mining. Many of the communities are former deep-mining communities that have never recovered from the demise of deep mining. It was interesting to hear the comments that were made about that earlier. Often, the only jobs in such areas are connected with opencast mining. Many of the people from those communities whom we represent have been brought up with mining—it has been in their blood for generations and, in some ways, it is perhaps unfortunate that it still is because the fact is that coal can be worked only where it is available to be worked. Some of the communities were established where they are simply because that was where the coal was, and there is nothing else to sustain them.

That is where we are coming from. We think that there is a future for the industry and we think that the industry has a skilled workforce that is worth keeping. People talk about the health of communities, but it must be remembered that we represent the workforce in those communities and, as I hope the committee appreciates, health and safety are at the top of our agenda as well. To anyone who insinuated that dusty conditions are being created that can affect communities—no

matter how many metres away the opencast sites are—I would say that we would not allow our workforce to work in such conditions. I hope that that is taken on board.

In relation to deep mining, there have been 600,000 claims for chest-related disease in the local communities. I have been dealing with the matter for nine years and I wish that we could get our hands on some of the evidence that apparently exists about how dust and other things affect communities. We have been fighting for nine years to get the industrial disease claims of surface workers in the deep-mining industry considered. However, on the basis of figures from doctors and the Department of Trade and Industry, the Government says that those diseases cannot be contracted by surface workers who work on site in washing plants and so on.

Therefore, we do not accept a lot of what has been said today. We have a role to play in representing the workers and our real fear is based on the figures from England. We cannot allow what is happening there to happen here and we will fight tooth and nail to prevent its happening in Scotland.

**The Convener:** Do you agree that we are perhaps not comparing like with like and that the experiences in England are not exactly the same as the experiences in Scotland? If it is applied, should the presumption against development not guarantee that, as long as a community benefit could be demonstrated, an application would go ahead? I represent a former coalfield area, and many of my constituents have a family history in coal mining. For example, my grandfather was a miner. We accept the fact that we live near coal-mining areas and that it is in our best interests for some of the bings to be dealt with through opencast production. Nevertheless, a balance must be struck and the presumption against development is about balancing the needs of a community and the needs of the industry.

**Nicky Wilson:** Yes, the trade unions would agree with that. The National Union of Miners has always been a community trade union and it is important to us that the communities are looked after and environmental consequences are not forced on them. However, many things have been talked about that have been missed today. Our question is whether the new planning policy will make a difference if you introduce the form of words that people keep saying will not mean much. If it will not mean much, it will not resolve the problem that we have with the industry now. If a development gets over the planning hurdle, what happens if a bad operator does not operate the site correctly? On that point, we clearly support the industry in the sense that the real key to that problem is the policing of the industry, not the planning policy.

It is clear to the trade unions that if a good operator operates a site, the health and safety of the workers will be taken into account. Some of the rogue operators—the cowboys, as we called them in the past—did not have a good health and safety record and, if I can be parochial, were not unionised. Therefore, it is clearly in our interest to have good operators who look after the community interest, the environment and the health and safety of the workers. The form of words in the draft SPP 16 does not address the real problems that you have heard about today from the community and others.

**The Convener:** However, health and safety for workers and how sites are managed and run are issues for the industry and trade unions to sort out together in partnership. Some sites in Scotland are very well run and much of that has been down to the trade union movement's influence.

**Patrick Harvie:** Nicky Wilson told us a few moments ago that the presumption against development would sound the death knell for opencast mining. Other witnesses—notably, Friends of the Earth—have told us that they support the presumption against development and do not expect it to mean the end of opencast mining, because some opencast developments would be able to show themselves to be acceptable. Given those different points of view, why are the witnesses so sure that the presumption against development has led directly to difficulties in securing planning permission south of the border? Why is the presumption against development the problem, rather than the industry's inability to prove its acceptability to communities and in environmental terms?

**Nicky Wilson:** It is because of the figures that we have produced.

**Patrick Harvie:** Why do you link those figures to the presumption against development rather than to the developments' inability to demonstrate their acceptability?

**Nicky Wilson:** They are the figures that we have on what has happened to the industry; what do you have to make you think that it is anything different? That, as we see it, is the fact of what happened to jobs. There are now fewer than 250 jobs and only four sites operating, three of which might close in the near future. That is what we go on.

**Martin Gaughan (Transport and General Workers Union Scotland):** We started in 1966 with 67 sites, and we are now down to four. There were more than 2,000 workers and we are now down to just over 200, so we have only 10 per cent of the previous workforce. Nicky Wilson is right. The only thing that we can go on is facts. We can argue about the whys and wherefores, but what I have said is factual.

**Patrick Harvie:** To be clear, I am not suggesting that there is a load of hidden opencast mining down south that nobody knows about or that what you tell us about has not happened; I am asking why you link the decline specifically to the presumption against development. What evidence do you have that it is due to the presumption against development rather than to practices being shown to be unacceptable to communities and in environmental terms?

**Stephen Boyd (Scottish Trades Union Congress):** There is a lack of plausible explanations. Since the presumption against development was introduced in England, the industry has been decimated and nobody has been able to explain to us for what other reasons that might be the case. Last week, Nicky Wilson and I met a senior planning official from the Scottish Executive, whose explanation seemed to be that Nicky Wilson's former colleagues—ex-NUM people—on planning authorities in England had an in-built bias against opencast coal mining and were therefore refusing applications. That is the type of reason that we have been given, and we have not heard any plausible explanation for the decline of the industry in England apart from the introduction of the presumption against development.

**Patrick Harvie:** Do you believe that if the presumption against development was introduced, the industry in Scotland would be unable to demonstrate that its activities are acceptable to communities and in environmental terms?

**Nicky Wilson:** No, I believe that the industry could, and does, do that. As we understand it—we do not profess to be planning experts—companies must already show that a development will be acceptable before it receives planning permission. However, that form of words seems to be what has made a difference between the industry south of the border and up here.

**Patrick Harvie:** Forgive me, but I am a little puzzled as to why opencast mining developments that could demonstrate that they would have acceptable effects on communities and on the environment would be unable to meet that test if they were required to jump through that hoop?

**Nicky Wilson:** The presumption against development changes the situation. We do not know, but the arguments that companies put forward south of the border may be just as good as those that they put forward here, yet developments that would receive planning permission up here do not receive permission down there—

**Patrick Harvie:** Presumably, that is because it is easier to get planning permission here in Scotland.

**Nicky Wilson:** The presumption against development is the only difference that we can see.

**The Convener:** The witnesses have attempted to answer the question. We cannot keep revisiting it just because Patrick Harvie dislikes the answer.

**Stephen Boyd:** Let me expand on that. We do not have a big problem with the two tests that are set out at the beginning of the planning policy document. However, the presumption against development switches the whole focus. Further inside the document, in the section that deals with appraisal of proposed opencast mining developments, employment is not even listed as a potential benefit. As it stands, the proposed planning policy will not allow the opencast mining industry to demonstrate the real benefits that it brings both to the communities in which it operates and to the economy at large.

**Patrick Harvie:** Mr Boyd's point about employment bridges on to my next question. In oral evidence earlier, we heard that an energy strategy that focused on energy efficiency and renewables would provide greater prospects for employment than the current energy policy. How do you respond to that?

**Stephen Boyd:** Speaking in my capacity as a member of the forum for renewable energy development in Scotland, I am a passionate advocate for renewable energy. Tomorrow morning, I will speak at a conference of councillors to try to sell the benefits of wind farms in Scotland. However, I also passionately believe that the worst thing that we could do for Scotland's renewables industry would be to exaggerate its potential benefits at this stage. If we are to build a viable renewables sector in Scotland—our marine sector in particular has massive potential—we should not oversell the immediate benefits. Whatever happens, we will need coal to see us through the current period. If we meet the target of generating 40 per cent of our electricity from renewable sources by 2020, we will still be left with the problem of where the other 60 per cent comes from. In the medium term at least, coal will remain an essential component of Scotland's energy mix.

**Scott Barrie:** Whether or not MPG 3 has caused a dramatic decline in the industry south of the border, the fact that many jobs have been lost within the sector is irrefutable. Is there information on the impact of that decline on those communities? What are those workers doing now?

**Nicky Wilson:** As people know, many mining communities have simply never recovered. In some cases, that is because of their remoteness. As one MSP said earlier, many opencast sites are situated in rural economies. In parts of the north-east where there have been closures, little other

work is available. A lot of money has been pumped in by the Government and the Scottish Executive to try to stimulate former coal-mining areas. That is all good work and it continues, but the fact of life is that many of those communities suffer because of their remoteness and lack of transport infrastructure. As people know, East Ayrshire and parts of South Lanarkshire have tried to attract new businesses and companies, but it is difficult for them to do so. A lot of work still needs to be done in providing transport and access to those places.

I fully appreciate the concerns that were expressed by the community people who gave evidence earlier, but I must say that when our representatives out there in communities have tried to get involved in some of those organisations, they have not been allowed to do so. Our representatives have tried to set up meetings to discuss the problems, but they have not been allowed to do that. There must be a two-way process. I appreciate that, on the other side, there are people who are totally opposed to opencast. I might disagree with them, but that is their view. There are polarised camps. Perhaps both sides get issues mixed up.

12:45

There is a way forward and communities can be helped. A lot of money goes in through mineral trusts. For every tonne of coal produced, 25p goes into the local mineral trust, which can help to build up communities whether environmentally or through providing sports centres or community halls. Communities have received a lot of benefits from the trusts and I hope that that continues.

Having listened to the previous evidence, I would say that, on communication, we have retired members in areas such as Greengairs and I have heard some horrendous stories. Our main point is that if there is proper policing of a site, the things that I have heard about should not happen. The community, or an independent person, should be able to step in immediately. However, such things do happen, which is wrong and we as trade unionists would never try to defend them. It is about the strength of the policing attitude, rather than changing words on planning.

**Christine Grahame:** I have a question on employment and the figures in your submission that show that in England there were 2,412 workers in 1996 and 1,062 in 2004. I want you to link that with the production of opencast. In 1996, production was pretty much the same in England and in Scotland, but in 2004 2 million opencast tonnes were produced in England and 7 million tonnes were produced in Scotland. Have the workers followed the production?

**Nicky Wilson:** Do you mean have they come up to Scotland to work?

**Christine Grahame:** Yes. Seven million tonnes were produced here, so did all the people who worked in opencast follow production?

**Nicky Wilson:** Some workers might have travelled up, but for the main part—and we pushed for this—where new sites have opened, there has been a lot of local recruitment. A lot has been said about St Ninians, but 70 local men are working there who never worked in opencast until the site came into operation. There is certainly a skills factor and people with expertise might have to move from site to site, but the trade unions have always argued strongly that local jobs should go to local people. That is our attitude.

**Scott Barrie:** I do not know whether you have seen the submissions that we have received, but the one from Scotland Opposing Opencast argued that opencast coal developments do not support much local employment because

“A high percentage of those employed in opencasting form an itinerant work force, moving from one site to the next.”

Do you agree with that analysis?

**Nicky Wilson:** I disagree with it and I am quite sure that figures could be produced to support my view, if that would help the committee. That argument is used, but it is not our experience.

**Martin Gaughan:** We probably have the largest membership of all the trade unions involved in opencast. Our membership appears to be indigenous to the areas where the opencast sites are.

**The Convener:** If the trade unions could provide the committee with that information, it would be helpful.

**Mary Scanlon:** You have mentioned employment several times and we have been presented with a graph that shows that in England fewer than 10 per cent of workers have been employed in opencast since the implementation of the presumption against. Are you convinced that there would be the same “decimation”, as you called it, in Scotland as has happened in England? Do you think that we will go from having 1,378 workers to 130 workers?

**Nicky Wilson:** That is our fear. I cannot answer the question. It might not happen, but we are considering what happened in England and the difference in the wording of the presumption against, as opposed to the situation north of the border. We do not have anything else to go on.

Because of the demise of the deep mines in the early 1980s, my organisation opposed opencast mining throughout Britain—it was seen to be a threat to deep mine jobs. That argument is more

than 20 years old and it no longer holds water. We have a coal industry now, not a deep-mine or an opencast mining industry.

**Mary Scanlon:** It has been suggested that we might not be comparing like with like. In England, many of the mining communities are close to conurbations, whereas they might be in more rural settings in Scotland. The new guidelines might not have as significant an effect in Scotland as they did in England. Do you have any information that that might be the case?

**Nicky Wilson:** No. Wearing another hat, I am a trustee of the Coalfields Regeneration Trust, which is a national body. I concede that there are more rural mining communities in Scotland, but parts of County Durham, Northumberland, Derbyshire and Yorkshire are just as rural. Someone mentioned that Selby coalfield closed recently. It was not near a major town; it was out in the country. It is a mix-max. I worked most of my career in Cardowan colliery on the outskirts of Glasgow. In Lanarkshire in days gone by, there were collieries and steelworks in heavily built-up areas. The picture is similar north and south of the border.

**Stephen Boyd:** It is important to use evidence to proceed. If someone somewhere is able to supply us with an analysis of the applications that have been made in England, and they are able to prove that those applications have been refused because the sites would be close to urban communities, we should encourage those people, whoever they are, to do that. If the committee could encourage the Executive to do that analysis or the committee could do the research, we would all find it helpful.

**The Convener:** We have already asked CoalPro to provide us with information about its experience of the applications that have been refused in England and the reasons for refusal. When the minister comes to the committee next week, we can pursue the issues that have been flagged up as a result of the evidence that we have taken today. We will particularly pursue the intention behind the change to planning guidance: is it about creating a better balance between opencasting and the communities, or is the underlying intention to end opencast mining in Scotland? The committee will have to pursue that to its appropriate end at next week's meeting.

**Linda Fabiani:** We have heard a lot about the lack of enforcement and there have been some pretty awful examples of the results of that. Mr Wilson mentioned lack of enforcement, too. Do you have an opinion as to why enforcement has been so badly carried out?

**Nicky Wilson:** I do not, but if I was living in Greengairs and a bund or opencast mine was built metres from my garden I would be pushing to find



out why. From what little I know about planning, I imagine that there are guidelines for site boundaries. The operator at Greengairs—I do not know whether I am allowed to say the name, but I know who it is—would be better sticking to football rather than mining.

What is happening there is totally unacceptable and no way would the trade unions defend it. Some of the people we represent live in those communities. The words “best practice” seem to be used a lot in the Parliament and an example of best practice seems to be the pilot scheme at St Ninians. As far as we know, no operator or trade union is frightened of best practice being part of the system across the board.

**Linda Fabiani:** I am finding it quite puzzling that we are talking about trying to tighten up procedures but we hear that an awful lot of existing procedures are being ignored. How does tightening up procedure make things better if the existing guidelines are being ignored?

**Martin Gaughan:** If there is proper policing of the procedures—

**Linda Fabiani:** But we do not have that. Why is that?

**Martin Gaughan:** It does not appear to be in place at the moment. We are saying that there must be more stringent policing of the procedures. If there was such policing, we would not be in the situation we are in at Greengairs.

**Linda Fabiani:** If that had been the case historically, perhaps we would not be sitting here discussing the matter.

**Nicky Wilson:** As I understand it, the mining consultant who was appointed by Fife Council with funding from Scottish Coal can stop operations. If he goes to a site and the operators are outwith their boundaries or are not working properly he can order them to stop operations immediately until the problem is sorted out, and I think that he has done so.

Nobody has mentioned financial bonds, which were brought in a number of years ago—I apologise, because I should have mentioned them, too. In our opinion, the introduction of bonds made a difference by chasing out some of the cowboy operators. Before operations start at a site, anything up to £5 million must be left as a bond with the local authority. If the site is not restored in accordance with proper planning procedures, the bond can be used to do that. If the operator goes belly up or whatever, the bond can be used. It can also be used to fine the operator if it does not operate the site properly. It is important for independent mining consultants to have that option; if the finance has already been left as a bond, the consultant can tell the operator that it

will be fined, say, £100,000 immediately. I do not know whether the money goes to the local authority or to the community, but we think that such measures strengthen the enforcement of planning procedures.

**Stephen Boyd:** I endorse something that was said by one of the witnesses from local communities. Planning departments in local authorities are under-resourced. We could argue all day long about the detail of various pieces of guidance, but procedures will not be monitored effectively unless planning departments are adequately resourced.

**Cathie Craigie:** There has been unanimous agreement among all the witnesses this morning about the fact that enforcement—by the planning authorities or whoever—is not taking place. We could consider bonds, which Nicky Wilson mentioned, but my understanding is that they come into play if a company goes out of business or fails to ensure that a site is restored according to the agreed plan.

I have been asking our panels about the separation distance that is proposed in the guidelines. All the witnesses in the current panel represent members of communities. What is the trade unions' view on separation distances?

**Nicky Wilson:** Earlier, the point was well made that, for the most part, it is on working faces that things happen, such as blasting through rock and digging of soft earth, both of which cause noise. We support the idea that there must be limitations on the separation distance between working faces and communities. There is a difficulty at boundaries, where there might be just one house. The witness from the Coal Authority was quite right to say that an increase in the separation distance could wipe out half of the sites immediately. One way around the problem that has been suggested is communication with the community, be it two or three householders, a hamlet or a village. Communication is the key.

We support the idea that there must be a certain distance between the coalface and the community. I think that 500m is reasonable, given the noise levels from opencast workings and other factors. An explanation has been given by others about cases in which there is a rail line or a road. On some sites, new roads have been made so that traffic does not have to go through small villages to get to the main road. If that is taken as the boundary it becomes unworkable in certain instances. However, we support the idea that there should be a definite limit on the distance between the working face and communities.

**The Convener:** I thank our panels of witnesses for joining us this morning and for their joint written submission in advance of the meeting. I suspend

the meeting to allow for the changeover to the final panel.

12:59

*Meeting suspended.*

13:02

*Meeting resumed.*

**The Convener:** I welcome our fifth and final panel of this somewhat lengthy meeting. I welcome Richard Hartland, the chair of the development control committee of the Scottish Society of Directors of Planning. He is joined by Councillor James Kelly, chair of housing, and Hugh Melvin, principal planning officer, from East Ayrshire Council.

I will start by asking you about community involvement. We heard this morning from community representatives who expressed their desire to be more engaged with the planning process. We also heard from developers who have said that they are willing to engage with communities. Will you comment on how you think we could get the two sides to meet up and what role local authorities could play?

**Councillor James Kelly (East Ayrshire Council):** I will start and go in at the deep end. In March last year, 6.7 million tonnes of coal were taken out of Scotland. East Ayrshire produced 3.9 million tonnes of that coal. I cannot see—the sun is in my eyes.

**The Convener:** I think that one of the blinds is broken, but if you would like to move to another seat that would be fine.

**Councillor Kelly:** Thank you, convener. In East Ayrshire at the moment, we have 600 direct jobs in the industry. If you multiply that, you will understand where we are coming from. Opencast mining is the most important industry employer in the whole area. East Ayrshire Council and its predecessor Cumnock and Doon Valley District Council, of which I was a member, have experienced opencast extraction for 30 years. East Ayrshire won an overall award for its mineral extraction subject plan this year, in competition with the whole of Britain, and that is with the biggest opencast congestion in all Scotland.

Because of the good work that Hugh Melvin and his colleagues have done in open planning, there have been very few, if any, objections to the proposals. No formal enforcement notices were required as the problem was tackled before enforcement action was required and the need for regular liaison committees decreased as public confidence in the process was gained. There has also been the opportunity to develop in an area adjacent to, and partially including, a site of

special scientific interest, with a long-term benefit in habitat management.

Forby the benefits that we have gained from opencast mining, we are number 15 in the list of the most deprived areas in Scotland. Over the years, out of the money that we have received from mineral and coal extraction, we have spent £5.4 million on leisure and environmental improvements in our area. We could never have imagined making those improvements if we had not gained the benefits of opencast mining. That is why I am strongly against the presumption against opencast mining.

We have managed opencast mining in an efficient manner. There was one rogue employer prior to 1999, and an accident happened in my village, in my ward. At that time, the requirement was for a boundary that was 60m from housing, and there was a flyrock incident. In two streets, rocks fell into front gardens and took bits out of the main roads. We told the planners that something needed to be done about the situation and, about six months after the accident happened, they came up with the 500m rule, which I think is adequate. When health and safety officers came out to that site, they found that, although it was a bad flyrock incident, the furthest the rock had flown was 130m—that was the distance from the site of lift-off to the furthest bit of rock. The search took a week to complete. After that, the 500m rule was promoted by East Ayrshire Council.

About two months prior to the 1999 election, the *Sunday Mail* ran two full-page articles calling my ward the “valley of death” because there were three opencast sites around the village. A certain person from a certain party stood against me on an anti-opencast mining policy, yet I was returned with the second-biggest majority on East Ayrshire Council. The people did not say that opencast mining was bad; once the bad practice had been explained to them, they said that, if that bad practice was cut out, opencast mining in our area was good because it provided jobs and money for the area, where there is a high level of deprivation. They also appreciate the amenities that we have been able to provide, including the bowling greens, the football clubs, the astroturf pitches and the swimming pool. In my village, up until last year, we had to travel 25 miles to use an indoor swimming pool. Without the money from the minerals trust, we would not have been able to build the pool; however, we got £600,000 from the minerals trust for that.

**The Convener:** How have you been able to engage with the communities in East Ayrshire positively and convince them that there is a community benefit in opencast mining?

**Hugh Melvin (East Ayrshire Council):** Because of the severe pressures that the

authority—including the previous authority—was under, the council's planning division felt the need to produce a subject plan. Basically, that was a development plan directed and geared towards the opencast industry. We felt that a balance required to be struck between meeting community aspirations and meeting the aspirations of the opencast industry, which is a significant employer in our area. We had to try to resolve the conflicting interests. The East Ayrshire opencast coal subject plan was subject to community participation and input, and the concerns of the community were embraced in the production of that document.

Having had some 25 years' experience in the industry and 25 years' experience of concerns raised by the community, we feel that we produced something that is acceptable to both sides: a balanced way forward for the aspirations of both the industry and the community.

**Donald Gorrie:** I thank you for your very helpful contributions so far. What lessons should we draw to improve matters with respect to planning and consultation before opencast mining goes ahead or otherwise? Aside from the planning aspect, there is the enforcement aspect. You are probably much better at that than I used to be, Councillor Kelly. In my experience, councils were at their weakest in the enforcement aspect. Do you have any lessons to give us on that?

**Hugh Melvin:** We could certainly do better on the enforcement side of the opencast industry but, at the risk of upsetting my councillor, I would point out that that is a resource issue. Our council has already responded to the consultation paper on the monitoring and enforcement charging regime, which we fully support. Having identified areas of conflict, we have removed a lot of objection from communities simply by introducing policies that direct opencast to specific areas where the least environmental conflict will take place.

**Richard Hartland (Scottish Society of Directors of Planning):** Living life with restricted budgets as we do, it is easy to say that more resources will solve a problem. I am not sure that that is the case when it comes to the enforcement of planning controls, however. That comment does not necessarily relate purely to the enforcement of mineral extraction and opencast coaling—the matter applies across the board in planning. The planning enforcement regime is slow and cumbersome, and it lacks teeth. It lacks an end product as far as problem solving is concerned. I have come across operators—not necessarily mineral operators—who will take the hit of a fine and a prosecution because that is cheaper. That is a sad reflection on Scottish planning. I would lobby the Executive and the Parliament to grasp that issue.

We need to concentrate on retaining, or rather

regaining, public confidence in the planning system, and an essential part of that is promoting the enforcement regime. Without that, I do not think that we can achieve the end product of social inclusion. No matter how hard we try to involve our communities, liaise with them and liaise with the operators, if we cannot get that end product we will end up with a lack of faith in the planning system.

**Cathie Craigie:** I will direct the first part of this question to Mr Hartland, but I am also looking for the elected representative's point of view. You will have been sitting through the earlier part of this evidence-taking session. Much has been said about the presumption against development. As a professional planner and chair of the development control committee of the Scottish Society of Directors of Planning, how would you describe the view of your organisation on the presumption against?

**Richard Hartland:** It is the organisation's view, as well as my personal and professional view, that it is easy to welcome more powers—any planner will. However, we need to take an intelligent reflection on why we are here. I suspect that we are here because, through no fault of the operator, the planning authority or community, we have a legacy of distrust. We also have a legacy of a lack of transparency throughout the process. We have had a reputation for a lack of co-operation. We have been working to older and probably out-of-date standards.

The difficulties that we have today are not to do with planning permissions that were granted yesterday, but with planning permissions that were granted way back. Some of those say, basically, "When you're finished, tidy up, please, lads"—almost literally. We have, unfortunately, a legacy of deviation from approved proposals. Perhaps that is for good, practical reasons, but the community loses faith if that happens without people's knowledge, and the planning authority gets angry if that happens without its knowledge. We need greater co-operation in that area.

It would be easy to welcome a presumption against and, generally speaking, the planning profession does welcome it, but we need to put that in the context that I have attempted to set out, and the parties involved need to have a perspective of working together, so that the presumption against evaporates as we develop good practice and confidence in the process.

13:15

**Cathie Craigie:** It has been suggested—and we have heard this in evidence today—that the presumption against opencast coal mining will be the only presumption against. Rather than

presuming against such applications, would it not be better to use the proposed planning bill to ensure that the development of local plans involves the community, so that every application is considered on its merits? Otherwise, you might find that instead of people co-operating with local authorities there will be confrontation.

**Richard Hartland:** Yes—we must work to get there. I admire the work that East Ayrshire Council has done—it has achieved that end. Other authorities have not yet reached that destination.

We assume that public participation—or community involvement or social inclusion—comes about because planning applications cause conflicts that have winners and losers. Such participation should come about earlier in the local planning process. Trying to get people involved is a big job. Sometimes the cynic in me says that the only way to spark interest when we put up a local plan for public consultation in West Lothian—which is where I work—is to include the abattoir in the middle of the town. However, that is the cynic in me speaking. We must get people involved, but people tend not to get involved until they feel personally threatened.

**Cathie Craigie:** I had better not say that some people might think that all planners are cynics.

Are you confident that your organisation as a whole will see the presumption against as a way of improving relationships with the local community and encouraging it to become involved? Might people not simply sit back and say, “Well, the local authority will refuse permission anyway”?

**Richard Hartland:** We are gaining credence in working with communities and operators and progress is being made. A good example of that is Polkemmet in West Lothian. There has been excellent co-operation among all the parties in the development and there is extraction as we speak. We have a compliance officer and bonds in place, and there are reports to us. There are minor deviations from what the planning permission allows, but the community is involved and is aware of them as soon as they happen and we are aware of them, as liaison groups have been set up. The approach has proved to be very effective and I hope that we can see things through to the end product, which of course, is a wee bit different at Polkemmet from that elsewhere, in that land will be provided for a vast number of houses—to meet structure plan requirements—two golf courses, shopping facilities and so on. There is a huge carrot—the land will not merely be returned to a quality agricultural environment. There is a huge community benefit in removing derelict sites and providing facilities.

**Councillor Kelly:** There is a danger that we must look out for. I am not saying that we should

not communicate with the community—far from it—but we must be careful.

For example, when East Ayrshire Council started planning we held major committee meetings out in the community, but we brought them back in-house because, to tell the truth, what we did was a waste of time. In some places, only four or five people turned up at major committee meetings. I do not know the answer to this problem, but if planning is taken out to the community, it is possible that professional protesters will steamroller proposals. That is a weakness, and we must be careful when that is done. I do not see a problem with how East Ayrshire Council has done things; we held public meetings in Cumnock town hall, Stewarton, Darvel and Kilmarnock, but people were not bursting through the doors to get in. However, we still came up with one of the best plans in Britain—we won an award for it. If we have good professional officers who draw up plans for us and take them to the Executive for scrutiny, we are doing our job.

I am not saying that we should not give them a chance, but there is a danger that people will shanghai meetings for their own ends. For example, people here today have said that they support their community. I am not saying that they do not support their community, but the way that things were put at the beginning of the meeting showed that they support their own ends. A perfect example is South Lanarkshire. A boy stood for election on a platform that was totally against all forms of opencast. The community beat him and the boy who won had the biggest majority in South Lanarkshire—and maybe the biggest majority in Scotland. That was the community saying what it wanted at the ballot box. You have to be careful that certain people do not shanghai community meetings.

**The Convener:** The community must be fully engaged and Polkemmet is a good example of that. My constituency sits on the boundary with West Lothian. The communities around Polkemmet have been described by some as serial complainers, although that is not how I would describe them. They have had to face the excesses of opencast for a considerable time. However, the community recognised the benefits of an opencast application, not least because it dealt with the unsightly bing and the problems associated with it, which the community wanted something done about. The local authority, the developer and the community recognised that by working together we could find a solution that met everybody's needs.

**Richard Hartland:** In that instance, the system worked without the presumption against opencast. In fact, it worked with a presumption for it, because all things panned out equally and it was a

success. Interestingly enough, it also panned out without the requirement for a 500m separation distance, because a practical approach was taken to the various difficulties that we encountered. Evidence was given this morning on the practical difficulties of rationalising being 500m from a haul road or whatever. We have to be reasonable and rational about it. I found the comments slightly pedantic, but they proved a point. We have to work at the reality of where coal faces are in respect of where people live, and exclude the paraphernalia of haul roads and so on.

**Christine Grahame:** I am concerned that the presumption against is being viewed as an absolute but, of course, it is not. The language is specific. The policy states:

"there should be a presumption against development unless the proposal would meet one of the following tests".

Two reasonable tests about communities are then applied. The first is:

"Is the proposal acceptable, taking account of the use of planning conditions and/or agreements"?

The second separate and independent test—they do not both have to be passed—is:

"Does it provide local or community benefits which outweigh the impacts"?

We must be clear. The language that is being used implies that there is a presumption against per se, but there are two tests first, and from the evidence that I have heard they are fairly reasonable.

Mr Hartland, the submission on behalf of the planners states:

"it would be welcomed by SSDP that any inducements in the form of community payments or trust funds were expressly excluded from community benefits and did not form part of the planning balance."

I noted what you said about other benefits, which is good and well, but why do you feel that that should be in the guidance?

**Richard Hartland:** I am not saying that there should be no trust funds. I advocate trust funds, and that they be organised and managed properly.

**Christine Grahame:** But you are making a distinction.

**Richard Hartland:** I make a distinction in that we have to be transparent, so that communities do not view operators as buying planning permission by making contributions to a trust fund. Trust funds must be separated out and planning applications determined on their planning material merits.

**Christine Grahame:** Therefore you suggest an amendment to the guidance in that respect. It would be useful if you could give us the wording for one.

**Mr John Home Robertson (East Lothian) (Lab):** I have a question on enforcement, following up on the question that Donald Gorrie asked a minute or two ago, to which Mr Hartland replied.

I recall from the time when there was quite a large opencast site on my patch in East Lothian that difficulties arose for the planning authority to do with staffing and specialist equipment to deal with complaints. It was a funny old thing: whenever the sound monitors were deployed, there were no loud noises; but, mysteriously, when the monitors were removed, there were some loud noises. Has that been the experience elsewhere, and can anything be done about it?

**Richard Hartland:** I take your point. When enforcement inspectors, coupled with SEPA, go to visit a site, it must be like when the Queen goes to visit a place and everything smells of fresh paint.

Regulations have been introduced for the monitoring of sites. We cannot be terribly clandestine but we must be slightly clandestine, because we have to be able to observe breaches of control. If the industry or the operators are aware that we are looking, things tend to look somewhat better. However, monitoring—and being seen to be monitoring—can actually help to improve things.

**Mr Home Robertson:** There are quite effective grapevines in some areas, as we know. However, the key point is that the planning authority and the other enforcement agencies should have both the staff and the equipment to do the job properly. We have been talking about presumptions; it would be no bad thing if opencast operators had a presumption in their head that, if they did anything wrong, they would likely be found out.

**Richard Hartland:** That would be the joy of a compliance officer. If the industry is to pay for the compliance officer, I would suggest that it should also pay for equipping that officer in undertaking the job—with air-quality monitoring facilities, for example.

**Mr Home Robertson:** Councillor Kelly gave alarming information about rocks flying 60m.

**Councillor Kelly:** That was about six years ago.

**Mr Home Robertson:** Okay—I do not want to make anything of it. However, do you think that the introduction of the 500m separation distance between the opencast site boundary and the community will have the desired effect? Is it sufficient?

**Councillor Kelly:** It will certainly have the desired effect where I live. Where I live, there are two huge opencast sites on either side of the village, one of which has just started up. The separation distance will have the desired effect of reducing vibration, for example.

However, what you have to understand—and what the villagers have to understand—is that if you live at Heathrow airport you will hear aeroplanes. You cannot stop that. An opencast mine is a working site with heavy machinery. On a still night, you will hear that machinery. You will hear safety beepers if a truck is reversing—of course you will—but you cannot stop opencast because of that. It is part and parcel of the game. It is not environmentally friendly at times—everybody knows that—but there is coal there and, as Nicky Wilson said earlier, you can only take coal out from where it is. That is why Muirkirk is there; that is why New Cumnock is there; that is why Dalmellington is there. That is why all the villages are there—because they all had pits.

I live in the village. I started at the pit in 1953 and I finished in 1991 because a certain woman put me out of a job. In those days, we generated our own electricity. We had two huge lums right in the middle of the village, and we had steam engines, and the black roke was coming out. Nobody complained in those days. Perhaps we were wrong not to complain, but what was happening was part and parcel of having the mine. We are now 100 miles further on from that.

**Mr Home Robertson:** We have moved a long way but is everyone on the panel satisfied that the 500m separation distance will be sufficient to cause a significant improvement to people's health and to the environment?

**Councillor Kelly:** I can honestly say that I have not had one complaint at any of my surgeries since the 500m rule came in.

**Mr Home Robertson:** That tells a story, certainly.

I have a final question on the definition of community. The draft SPP 16 gives planning authorities discretion over what constitutes a community. That can be obvious if we are talking about a town, a village or a group of houses, but if we are talking about one isolated cottage, or only one or two houses, life can get quite complicated. Do you have any thoughts on that point?

**Hugh Melvin:** In the East Ayrshire opencast coal subject plan, we have defined a community as being a community of about 10 houses. We have introduced a policy whereby there would be a 500m buffer zone between workings—and by that I mean any workings, not just the coalface or the face of the extraction area—and the communities.

We have said that there might be circumstances in which it could be argued that certain aspects of the development can come closer than that, provided that there are no objections that cannot be overcome in some way. We also have policies that protect people in houses that stand on their

own or in small groups and do not allow certain operations to take place within 100m of those properties. For example, blasting or any likely noise-generating activity such as soil stripping or overburden-creating activities that continued for a period of time in excess of 12 months would not be acceptable.

13:30

**The Convener:** Mr Hartland, do you have comments on either of those points?

**Richard Hartland:** I largely agree with what Mr Melvin has said. There are practical approaches to solving problems in this way.

I have noted in the past that problems have been solved when an operator has purchased the house and the residents have relocated. I have also found that, in situations in which the stripping of overburden and the cutting of the face was to take place in a two-week period, the problem has been solved by the company paying for a two-week holiday for the households that would be affected—problem solved.

**Mr Home Robertson:** Providing you are dealing with reasonable people, which is not always the case.

**Richard Hartland:** The case that I am talking about was in West Lothian.

**Mr Home Robertson:** Well, there you go.

**Councillor Kelly:** I want to make a point in relation to a question that was asked earlier. I have been on liaison committees for 17 years and have had an opencast site next to my village for over 30 years. We have a strict approach and, to be fair, Scottish Coal has taken that on board. In the three opencast mines in my area, the lowest measurement of local employment is 76 per cent. That means that 76 per cent of that site's workforce lives within a 20 mile radius. In another opencast site, more than 80 per cent of the workforce lives within a 20 mile radius. I would count that as employing local labour.

**Linda Fabiani:** Have any other local authorities that have opencast mines in their areas approached you for advice on their plans since you won the Royal Town Planning Institute award?

**Hugh Melvin:** I am not aware of that, but we might get people knocking on our door. We have worked closely with South Lanarkshire Council. When we were preparing our plan, it was preparing its plan. We wanted to try to come up with areas of continuity and consistency not only from an individual authority's point of view but within a coalfield environment. Although we might not have got things perfectly correct, we hope that we have achieved a balance that satisfies the needs of both of the conflicting interests.

**Donald Gorrie:** I want to ask a question that people have asked me. Is it right that we focus purely on opencast coal mining or should whatever policies we have also include quarrying and waste disposal, which are, arguably, somewhat similar activities? A yes or no answer would be fine.

**Councillor Kelly:** It is funny that you should ask that. Last week, I asked the same question at a coal community campaign meeting. We just gave a 10-year extension to a rock quarry that is about seven miles from my village. Eight miles in the other direction from my village, there is a huge sand quarry—half of it is in South Lanarkshire and half of it is in East Ayrshire; it is not in my ward—and, when I go past it, I can see that it causes more problems on the road than the other quarry does, even though it is subject to no enforcement. When coal lorries leave opencast mines, they must be washed before they go onto the main road. However, that does not happen with the sand lorries.

**Hugh Melvin:** East Ayrshire Council's planning department will be using the guidance that it has produced and the knowledge that it has gained from dealing with opencast mining to implement good practice and policies across all the mineral extraction and landfill sites. A lot of what is in the opencast coal subject plan can be reflected in our handling of those sorts of applications.

**Richard Hartland:** SPP 16 refers to other factors in its discussion of cumulative impact. That needs to be extended to quarrying, as has been mentioned, timber extraction, which requires large vehicles to use roads, wind farms and the presence of contaminated land in or near a community.

I would like to say something about the previous question. In the discussion document, we make the point that we would greatly like to be approached by other councils. The purpose of the Scottish Society of Directors of Planning is to provide a means whereby knowledge and experience can be shared, but the mechanism needs to be more focused. The recommendation is that the Scottish Executive should set up a group wherein all the experience and practice can be banked. To come back to the first point, that group need not be exclusive to planners but could involve communities and operators.

**The Convener:** Would it be possible for East Ayrshire Council to provide us with a copy of its plan, particularly in relation to opencast developments? The model seems to have considerable merit and all members of the committee would like an opportunity to consider it in more detail.

Do you have any suggestions, other than those that have been touched on already, as to how the draft policy could be improved?

**Richard Hartland:** The policy needs to reflect and be reflected by the emerging planning bill, particularly with regard to enforcement powers. That issue needs to be examined across the area of planning but particular thought should be given to how enforcement powers could be improved in relation to mineral operations and similar developments that impact on the environment.

We welcome SPP 16 and hope that progress will be made on it. However, that progress cannot take place in isolation from further development of town and country planning and the relevant legislation.

**Hugh Melvin:** We have to try to rebuild trust in communities. One of the ways in which we can do that is to ensure that the enforcement and monitoring side of things is robust and transparent. We need to get away from a regime of being reactive to complaints and start to be more proactive in relation to monitoring. However, that needs to be adequately resourced.

**The Convener:** I thank our witnesses for attending this morning and for providing us with helpful evidence.

The committee will take account of all of the points of view that were raised today and will discuss them with the minister when she appears before the committee at our next meeting on 9 March.

I extend my thanks to everyone who has been involved in this rather lengthy meeting.

*Meeting closed at 13:38.*





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