

COMMUNITIES COMMITTEE

Wednesday 9 March 2005

Session 2

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CONTENTS

Wednesday 9 March 2005

	Col.
ITEM IN PRIVATE	1815
SUBORDINATE LEGISLATION	1816
Housing Support Grant (Scotland) Order 2005 (draft)	1816
Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2005 (SSI 2005/62)	1817
OPENCAST COAL (DRAFT PLANNING GUIDANCE)	1819

COMMUNITIES COMMITTEE

8th 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)
Mr Adam Ingram (South of Scotland) (SNP)
David Mundell (South of Scotland) (Con)

THE FOLLOWING GAVE EVIDENCE

Alan Denham (Scottish Executive Development Department)
Johann Lamont (Deputy Minister for Communities)
Ian Mitchell (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 6

Scottish Parliament

Communities Committee

Wednesday 9 March 2005

[THE CONVENER *opened the meeting at 09:33*]

Item in Private

The Convener (Karen Whitefield): Welcome to the eighth meeting of the Communities Committee in 2005. I remind members to switch off their mobile phones.

Item 1 concerns item 5, which relates to our approach to stage 1 of the Housing (Scotland) Bill. Do we agree to deal with that item, and any future items relating to our approach to the bill, in private?

Members *indicated agreement.*

Subordinate Legislation

Housing Support Grant (Scotland) Order 2005 (draft)

09:34

The Convener: I welcome Johann Lamont, the Deputy Minister for Communities, who has joined us for our consideration of the draft Housing Support Grant (Scotland) Order 2005. Accompanying her is John Ritchie, who is from the social housing strategy and finance division of the Scottish Executive.

As members are probably aware, the draft order is an affirmative instrument, so the deputy minister is required, under rule 10.6.2 of the standing orders of the Scottish Parliament, to propose, by motion, that the draft order be approved.

Committee members have received copies of the draft order and the accompanying documentation. I invite the minister to speak briefly to the draft order, but not to move the motion at this point.

The Deputy Minister for Communities (Johann Lamont): The draft Housing Support Grant (Scotland) Order 2005 sets out the amount of housing support grant that is payable to local authorities in 2005-06. As has been the case for a number of years, only the two councils with the highest debt per house, Shetland Islands Council and Comhairle nan Eilean Siar, will qualify for grant. The total grant payable to those two councils in 2004-05 is around £4.9 million. The housing support grant remains a substantial proportion of total housing revenue account income for those councils. Without that subsidy, rent levels in those areas would have to increase substantially.

The Convener: As it appears that members of the committee have no questions to ask, I ask you to move motion S2M-2404.

Motion moved,

That the Communities Committee recommends that the draft Housing Support Grant (Scotland) Order 2005 be approved.—[*Johann Lamont.*]

Motion agreed to.

The Convener: I thank the minister for her presentation and remind her that she is not yet released, as we will be asking her questions with regard to planning guidance on opencast coal mining later.

**Housing Revenue Account General Fund
Contribution Limits (Scotland) Order 2005
(SSI 2005/62)**

The Convener: Members have been provided with a copy of the Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2005 (SSI 2005/62) and the accompanying documentation. Do members have any comments to make?

Donald Gorrie (Central Scotland) (LD): I am not challenging the order; I just want to make an observation. If members agree with my observation, perhaps that might influence our future activity. I am not sure that it is reasonable and fair that the whole of the cost of past transactions in councils' housing activity, especially the sale of a lot of houses with a heavy discount, should fall on the existing tenants. Is it right that the community at large—whether through council tax or in some other way—should pick up that deficit? In some councils, the cumulative loss that has occurred as a result of the sales is quite considerable and has an impact on rents.

The Convener: I appreciate your concerns on that matter, but I am not sure that they relate to the order that is before us. However, members will be aware that the Scottish Executive gave a commitment to this committee to review the right-to-buy policy, and it will produce a report on the issue when it concludes that review. Perhaps the issues that Mr Gorrie raises could be considered by the committee when we consider the Executive's report on the matter.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I have no wish to speak against the order. However, I note that paragraph 2 of our briefing paper states:

"The Executive's intention is that the instrument should ensure that there are no additional pressures on council tax payers as a result of a cross subsidy from councils' general funds to the HRA."

I support Donald Gorrie in the line that he takes. Perhaps we can ask the Scottish Executive to gather information on how much subsidy goes from the rent payer to the general account—that happens and has done so for many years. That is not fair to rent payers because they are paying their council tax and then paying a subsidy to the general account for a number of reasons—whether for maintenance of open spaces or whatever.

The Convener: If there is a consensus that the committee is concerned about this area, based on the substance of the points raised by Mr Gorrie and Mrs Craigie, there is no reason why we should not write to the minister to ask for his comments. Any response would be furnished to committee members for their further consideration.

Is the committee content with the order?

Members *indicated agreement.*

The Convener: Therefore, the committee will not make any recommendation on the order in its report to the Parliament. I ask members to agree that we report to the Parliament on our decision on the two orders that we have considered today. Are we agreed?

Members *indicated agreement.*

Opencast Coal (Draft Planning Guidance)

09:41

The Convener: Item 4 on the agenda is the draft Scottish planning policy 16, "Opencast Coal: Consultation Draft". The committee will hear evidence on the draft planning guidance from the Deputy Minister for Communities, Johann Lamont, who is accompanied by two officials from the Executive: Alan Denham, head of planning division 4 in the Development Department; and Ian Mitchell, policy officer from planning division 4.

The minister would like to make a short opening statement before we embark on our questioning.

Johann Lamont: I am not sure how short the statement will be, but please interrupt me if I go on for too long. I thought that it might be useful to outline the Executive's thinking on the matter because concerns have been expressed on all sides. I watched the committee's evidence-taking session last week and read the *Official Report* of that meeting, so I am aware of the issues that were raised. I will try to be brief, but I want to give the committee some detail as well. We will be happy to answer questions thereafter.

I am pleased to have this opportunity to respond to any questions that the committee has on draft SPP 16. Before doing so, I will set out the Executive's position. The industry is concerned that the consultation paper represents a significant policy change. However, the intention of the review is to refine policies that were put in place in 1999. Those policies are working well, but the time is now right to revisit them in the light of independent research findings.

The purpose of the policies that were put in place in 1999 was to ensure that local communities and the environment are properly protected from the adverse effects of opencast coal extraction. However, national planning policy guideline 16 also recognises that extraction should continue to be permitted if proposals are environmentally acceptable or provide appropriate local or community benefits. The intention of the guidance is to strike the right balance between the legitimate interests of communities and the needs of the industry.

Similar guidance was introduced at the same time in England and Wales. There are differences that reflect drafting preferences, but the intention has always been that the frameworks north and south of the border should afford similar levels of protection to opencast communities.

On its publication, NPPG 16 was greeted with dismay by parts of the industry. Representatives of

Scottish opencast companies were quoted as saying that there would inevitably be job losses, and jobs in areas of high unemployment would be lost to foreign companies. Those fears have not materialised. Employment and output levels remain roughly the same as they were in 1997 and consented reserves are significantly higher.

The relatively healthy position of Scottish opencasting since 1999 has ensured that NPPG 16 has been subjected to close scrutiny. Two petitions were submitted to the Scottish Parliament's Public Petitions Committee. Those petitions led to the previous Transport and the Environment Committee investigating the subject in 2002. This committee will have seen last week that opencasting is a controversial and emotive subject, with often very strongly held and contrasting opinions. The Executive therefore welcomed the valuable independent and thorough scrutiny that the reporters to the Transport and the Environment Committee gave to NPPG 16.

There was a recommendation that a review of NPPG 16 should be undertaken and that it should address the issues raised during the Transport and the Environment Committee's investigations. The Executive immediately accepted that recommendation and, given the sensitivity surrounding opencasting, we considered that the most appropriate way forward was to commission independent research to assess the policies.

That research was undertaken in 2003. It concluded that NPPG 16 had provided a sound and robust framework that significantly enhanced the ability of planning authorities to control effectively the adverse effects of opencast coal development on communities and the environment. It recommended a review to update, revise and clarify some of the existing policies. A number of recommendations were made on how that should be done.

09:45

A written consultation took place at the end of last year. The proposals in draft SPP 16 took up most of the recommendations made by the researcher. The responses are still being analysed. It is important to remember that SPP 16 is still a consultation paper and that changes will be made to reflect suggestions made by respondents.

It is worth acknowledging that—apart from one unresolved issue—there now appears to be some consensus with the industry on the way forward. In its written evidence to the committee last week, Scottish Coal suggested an amendment to the wording of the draft to acknowledge that landscaping and nature conservation work should be permitted within 500m of a community. Another

suggestion was made regarding the future plans of operators when submitting applications. The Executive certainly intends to consider those suggestions further.

The proposed presumption against development is clearly the most controversial part of the review. The first point to make is that SPP 16 is not proposing a presumption against planning permission but a presumption against proposals that are not environmentally acceptable or do not provide local benefits. The second point to consider is whether that is a significant change. Existing guidance states:

"If the proposal does not satisfy one or other of the ... tests it should be refused planning permission".

Draft SPP 16 proposes that there should be a

"presumption against development unless the proposal would meet one of the ... tests".

Obviously, much rests on the interpretation of "refused" and "presumption against".

The research took the view that there is no difference in effect between the existing terminology and a clear statement that there will normally be a presumption against. The research suggests that adoption of the presumption against in Scotland would not alter the intention of Government, nor would it make it easier—or more difficult—for developers to obtain planning permission. The industry does not share that view. It believes that the presumption against will have a devastating impact on Scottish output and jobs. The argument is, "It happened in England so it will happen in Scotland."

The industry is clearly having a difficult time obtaining consents in England. Understandably, that is causing the trade unions concern. The difficulty is that no definitive reason can be given for why that is happening. Research suggests that it is because of the supply preferences of English power generators and the quality of English coal.

The Confederation of UK Coal Producers has made representations to the UK Government, saying that the tests are being misinterpreted by English authorities. In the past, CoalPro has also suggested that local geography is a key issue. In England, the existence of closely spaced communities in coalfield areas is more likely to restrict acceptable proposals; in Scotland, the sites are more likely to be in upland or semi-upland areas, further away from settlements.

Another suggestion put forward is to do with the way in which national guidance is interpreted by planning authorities. I would like to add my congratulations to East Ayrshire Council on its recent Royal Town Planning Institute award, which was very much deserved. The council should be commended for showing how local policies can be

used to balance the need for development with a responsibility to protect other interests. Such an approach is not restricted to East Ayrshire. I am sure that the balanced way in which Scottish local authorities have approached the two tests has shown that opencasting and other interests need not be mutually exclusive. Indeed, they can be mutually beneficial.

Whatever words are used, the planning frameworks for opencast coal extraction in England and Scotland are currently very similar. It may be that our thoughts should turn to why proposals in England are not meeting the same two tests that are in place in Scotland.

Much has been made of the possible impact of draft SPP 16 on jobs. The Executive has always recognised the important employment opportunities that opencasting provides—particularly in the rural communities of East Ayrshire, South Lanarkshire and Fife. In Scotland, we have always made it clear that, for the purposes of the two tests, employment should be regarded as a benefit. That is explicitly linked to the second test now. We fully expect planning authorities to continue to give careful consideration to that vital issue when considering whether a proposal provides local or community benefits.

I hope that the committee and others are reassured by the responses from Scottish local authorities to the consultation paper. They confirmed the view that the presumption against does not signal a significant policy change. We are not moving the goalposts. Our proposals do not impact significantly on local policies that are already in place.

Why propose a presumption against if it makes no difference? First, I should make it clear that draft SPP 16 is a consultation document that is intended to canvass views on recommendations that have resulted from independent research. The research suggested that the change was policy neutral but would be seen as addressing the concerns of those who believed that Scottish guidance was weaker than English guidance. That conclusion was very reassuring, given that the Executive has been arguing for six years that Scottish policies are as robust as those in England.

We still do not believe that a presumption against will have the impact that the industry suggests. However, the industry is arguing that the proposal will result in its near elimination. If that is what the industry believes, local community groups that are following this debate are likely to be more convinced than ever that this is a substantial policy issue and that the presumption against is far from being policy neutral. Regardless of whose interpretation of "presumption against" is

correct, the question is how we reassure Scottish communities beyond doubt that they are afforded the same level of protection as English communities. As highlighted in the research, the best way of doing that is to have identical tests in Scotland and England, which would remove any current doubts and provide important guarantees about a level playing field. The Scottish Executive and the committee must now consider whether Scottish communities deserve such reassurances.

SPP 16 is one of a number of issues that must be addressed to ensure that the interests of the community and the industry are better reconciled. We have already indicated that we intend to include in our planning bill, which will be introduced later this parliamentary session, a power to enable planning authorities to charge operators for monitoring and enforcing mineral permissions. We will also examine what more needs to be done on public participation and enforcement. The industry and communities must also make positive efforts to foster an atmosphere of trust and co-operation. Some positive examples have shown that that can be done, and it is hoped that voluntary schemes such as Scottish Coal's compliance plus regime will become the norm.

However, such schemes must supplement, not replace, national guidance. NPPG 16 has led to considerable improvements on the ground, and the proposals in draft SPP 16 must build on what has already been achieved. As a result, the review will ensure that opencast coal planning policies balance the interests of communities with the need to maintain Scotland's environment and operators' ability to make acceptable proposals. Helpful comments have been made in response to the consultation paper and by those who gave evidence at last week's committee meeting. The committee has taken evidence from all the main interests and will know that the issue is sensitive and controversial. That said, it is important to acknowledge that we are close to some acceptance of all but one of the proposals in draft SPP 16.

I await the outcome of the committee's considerations with great interest and hope that we will be able to answer any questions that you might have about the Executive's position.

The Convener: Thank you for your comments. You have raised a number of issues that the committee will want to pursue at length.

Christine Grahame (South of Scotland) (SNP): I must once again raise an issue that I have mentioned before. I am grateful for the minister's lengthy and very helpful statement; however, it would have been more helpful if we had received a copy of it in advance of the meeting. I do not know about other committee members, but I do not find it helpful to try to make

notes while listening to a long statement that contains concessions, adaptations and other announcements. I simply wonder why we cannot receive such statements with all our other papers.

The Convener: I am not sure whether there is any particular reason why we can or cannot receive such statements. However, members will pursue at length several issues that were raised in the statement. After all, that is the purpose of the questioning. I would have thought that the purpose behind the minister's statement was to flag up some issues that we might or might not want to pursue. The issues that are pursued with the minister—whether or not she has raised them—are entirely at committee members' discretion. With that, we move on to questions for the minister, which will probably be a lengthy item.

Minister, you indicated that you listened to last week's evidence. If so, you must acknowledge that community groups feel very strongly about the lack of engagement in the planning process. They were particularly concerned that communities should be able to build good working relationships with opencast developers at an early stage. They also believed that there needed to be greater trust between developers and communities, certainty around planning applications and the planning process in general. I am particularly keen to find out whether you believe that any action can be taken to ensure that operators effectively and sufficiently engage with communities early on in the planning process to ensure that such trust exists.

Johann Lamont: Let me say first that I shall certainly reflect on the points that have been made in relation to the statement. It is helpful to get things on to the table—not as a way of preventing members from asking questions, unfortunately, but as a way of informing the direction that the debate takes. The statement was certainly not intended to be anything other than helpful.

Some of the issues that we are drilling into around the planning policy reflect a broader debate on concerns about planning, which we shall go into in more detail when the planning bill comes along. Enforcement, distrust and conflict between communities and developers are all big issues in planning, and they will take a lot of working through. On the issue of distrust, particularly in relation to opencast working, we do not start with a blank sheet of paper. We start from an experience of distrust, of bad practice and of a feeling that there were some in the industry who sought to get away with things if they could. Out of that has come a broader distrust, which means that, even where the industry is clearly beginning to develop proposals to work with communities, there is a huge hurdle to overcome. We cannot wish that away. That has been the experience of

communities; certain things have happened to them and that has become something that is true for them. We have to work closely on that.

The proposal will allow clarity about what the developer has to convince people of: applications have to be environmentally acceptable and must show that there is local community benefit. We are looking at separation distances, except perhaps where the work between the two sides would be about landscaping rather than anything else. The industry itself has talked about compliance plus, and we are looking at monitoring and enforcement and at finding ways of ensuring that they are more than an aspiration. In my view, the proposal is not a threat, either to the industry or to local communities; rather, it offers rules of engagement for that dialogue. It is clearly in the interests of any developer to talk to and work with communities early on, rather than there being a feeling that what developers are trying to do is maximise their own benefits and see what they can get away with. If there is recognition in the industry that there is a history that has to be addressed, I think that that is helpful.

The Convener: Are you confident that those rules of engagement will enable communities to feel reassured that, if breaches occur and their concerns are not addressed, there will be sufficient scope for local authorities to respond to those concerns? Will local authorities also be able to respond to the concerns of the industry that all their applications might be opposed just because all opencast is considered to be bad by one local authority or one community?

Johann Lamont: The draft guidance is clear in saying that there is a presumption against unless one of two tests is met. That gives the developers a clear indication of what they have to do to secure planning permission. On the other side of the argument, because we are talking about monitoring and enforcement, we are considering site visits. Communities also need to know that a developer's commitments are real. There is a real commitment to compliance plus, and there is evidence of that in the examples of good practice that have been developed by operators who realise that there is a benefit in taking such an approach.

Rules of engagement are more likely to work when people want them to work, and there has to be a reassurance on both sides that it is not a case of saying, "Well, if we put this condition in and we say that, things will be fine and we'll get our planning permission." There must be a real commitment, and there are indications such commitment is being given. There must also be an understanding that the proposals are not an attempt to close down the opencast coal industry in Scotland. That is not the intention and it is not what is indicated in the proposals.

Linda Fabiani (Central Scotland) (SNP): All the community representatives whom we met last week made it quite clear that they felt that they were disadvantaged in terms of resources and time. For example, they said that they received copious documentation with only two to four weeks to go through it. The theory that communities will be involved is all very well, but the practice is often different. What assurances can you give about the resources and assistance that will be given to communities?

Johann Lamont: Our communities, despite their own argument that they are disadvantaged, have been clear, visible and effective in making their case about what has happened to them.

In the broader planning context, we are seeking a planning system that is more inclusive. Understandably, that is partly about notice—people knowing about what is happening in time to be able to respond to it. There is a broader issue of resource, into which the Executive is conducting research. We must have a planning system that allows for real engagement, rather than one in which there appears on paper to be engagement, but in which there are huge barriers to that. I am optimistic, because communities have already shown that they have the strength and the ability to take on the system when they feel the need to do so.

10:00

Linda Fabiani: Multiple and repeat applications are causing communities particular grief. Do you have anything to add on that matter? Will having a presumption against development help communities to become involved at earlier stages or in different ways?

Johann Lamont: One of the main things that we have tried to do in relation to multiple applications is to create a sense of certainty. Areas that may be considered for opencast should be identified clearly and local people should be aware of that. Uncertainty is created when applications are made for one area and extensions are sought over time. We are trying to write in as much certainty as we can at an early stage. In my view, having a presumption against development, except where one of two tests is met, concentrates minds. If someone has to establish that there is community benefit, I am not sure that they can do that without working with and speaking to the local community, and providing evidence that they have done so. That should give people reassurance. A presumption against development may not do what is claimed for it, but it means that when someone is seeking planning permission they must make the argument for why the development would be beneficial.

Linda Fabiani: There was a call for an independent adviser—similar to the one that exists for tenants in cases of stock transfer, for example—to be appointed. What is your view of that suggestion?

Johann Lamont: I know that during the stock transfer process it was regarded as important to ensure that people had independent advice. I am happy to consider the suggestion further.

Donald Gorrie: I want to pursue the same theme, from the point of view of councils. We have received complaints that councils are not adequately resourced with planners to carry out consultation before anything is decided. We want to have a three-way consultation involving councils, local communities and developers, but it is alleged that councils cannot play their full part in that.

We have also been told that, when opencast developments are in operation, councils do not monitor them as well as they should, partly because they do not have staff with the technical expertise to do that. Is there any way in which the Executive could help councils to provide more resources for planning and, in particular, more people who really understand the subject?

Johann Lamont: Obviously, there is always an issue of resources. People always make that point. However, the issue in planning is not just financial resources. You are right to highlight the fact that there are other resource issues. If we think of some of the difficulties that are involved in planning, we can understand the pressure to which it is subject as a career option. The Executive has acknowledged that the issue of financial, staff and technical resources is important and has commissioned research into the current financing of planning authority functions. It is important not just to manage the system but to carry out enforcement and monitoring.

We are also considering the issue of human resources—what is happening around recruitment and retention and professional development. Issues such as morale, motivation and management will be examined. They will be addressed more fully in the planning bill, as we need to consider the balance of work that planners are expected to do. They deal with a massive range of projects, from the biggest, most significant planning development in 100 years to someone's garage. We must consider that issue in the round. We have taken on board the point that Donald Gorrie makes, and the research is due to be completed by the end of April 2005. Obviously, we want to ensure that it informs what is later included in the planning bill.

Donald Gorrie: Some communities feel that some councils have a predisposition in favour of

the developer and against the community. Will SPP 16 redress that and make the argument more equal?

Johann Lamont: What people feel and what is the case can be two different things. We often judge the quality of somebody else's views by whether they agree with us. The view of the planning process that I took as a constituency member tended to be swayed by what came out at the other end of it. It is not possible to make everybody happy at the end of the process, but SPP 16 provides rules of engagement that create an expectation that certain things will have to happen. That process should be transparent; it should enable planners to say that a development is environmentally acceptable or offers a local community benefit, and give the evidence for that. That should help, but I realise that trust cannot be created in a moment because it is affected by what communities have experienced in the past, which will take a long time to unpick.

The Convener: In your earlier response to me, you picked up on the presumption against development. You will be aware that the coal industry and the trade union movement have raised concerns about the presumption against development and said that introducing it represents a substantial change to existing planning guidance. On the other hand, the Executive has argued that the terminology that is used does not change the effect of the planning policy tests. I would be grateful if you would explain to the committee why the term "presumption against development" has been chosen for SPP 16.

Johann Lamont: Our research indicated that it was a policy-neutral change, but we recognised that, because of communities' experiences with opencast mining developments, there was a feeling that the planning regime in Scotland was easier than that in England and therefore that there was no level playing field. The reason for the shift to the presumption against development, after reflection on the recommendations that came out of the research and the original investigation by the Transport and the Environment Committee, was simply to reassure communities that they had the same entitlements and rights as communities south of the border. It is as simple as that.

I understand why the industry has indicated grave concern about the presumption against development and why trade unions are exercised by the change if they feel that it is a threat to their members' employment, as they have a right to be exercised by that. However, that is more to do with the way in which the presumption against development has been presented than with the reality of the position. We are saying that local communities have the same rights as those south

of the border to have their concerns recognised and that, unless one of the two tests can be passed, there should be a presumption against granting planning permission. That is a reasonable position to take. The difficulty is that some of the noise and clamour around it suggest that it is a far more serious matter. I hope to reassure the industry and communities that that is not the case. SPP 16 says that there is a place for communities and their concerns in the development of the opencast mining industry.

The Convener: Is the industry being singled out for harsher treatment than other industries because some communities consider opencast mining to be unacceptable? Last week, the committee took evidence from some witnesses that if a presumption against development is to be introduced, it should apply not only to opencast coal mining, but to landfill and quarrying, which have similar environmental impacts on communities.

Johann Lamont: As I have said, history plays a great role in the matter. The history of the opencast mining industry led the incoming Labour Government of 1997 to make a political commitment to address opencast mining. We cannot say that the historical context that has led to the development of the policy does not exist.

We will have to consider the other types of development that you mention case by case. In the planning process, we have to examine the impacts on environmental justice in local communities for any kind of development.

Scott Barrie (Dunfermline West) (Lab): The convener touched on the nub of the matter. The issue comes down to people in the industry being concerned that using the “presumption against” terminology will somehow contribute to a decline in opencast mining. I am interested in your view that the use of that terminology will make little difference and that the proposals are policy neutral. You are saying that, in some respects, we are playing with semantics and that only the language is being changed, without there being any dramatic effect, although communities might be reassured. I wonder whether that is the best way of proceeding when we are discussing planning legislation, given that the main determinant of whether people think that the planning system is robust is the output.

In your introductory comments, you said that you acknowledge the industry’s compliance plus alternative, which you see as complementary to SPP 16—you might not have used those words, but that was the impression that you gave me. However, the industry and the trade unions seemed to suggest in their evidence last week that they saw compliance plus as an alternative to the “presumption against” terminology. Will you clarify what you were saying about compliance plus?

Johann Lamont: I do not think that the change is policy neutral—an independent researcher took that view and we have progressed on that basis. Obviously, I do not accept that SPP 16 will contribute to the decline of the industry, but I understand why people who are concerned about the industry declining might be worried that that will be the policy’s consequence. I hope that SPP 16 will contribute to the decline in bad practice in the industry and push out people who have ridden roughshod over local communities and contributed to a build-up of serious mistrust over time as a direct result of people’s experiences. All of us would be comfortable with that.

The point that I was trying to make about compliance plus is that it does not need to be an alternative. The industry can pose compliance plus as an alternative if it wishes to do so, but it is not necessary to say that we do not require SPP 16 in order to embrace and welcome the developments in compliance plus. We still need the policy. It might even be argued that the policy in all its forms has concentrated minds and that without the planning policy guidelines in their first incarnation, really good practice would not have been developed as it has been. The policy does not seem to me to be a threat to good practice in the industry.

Patrick Harvie (Glasgow) (Green): I want to ask about the two tests. Community groups and Friends of the Earth Scotland have expressed concern and have asked whether the tests will be based on the perception of the people who are affected—that is, whether a proposal should be acceptable to the people who live nearby or to the local planning authority—and whether community benefits should outweigh impacts. Who will make such judgments? In addition, will SPP 16 give protection to communities when they feel that a development is unwelcome?

Johann Lamont: I do not know whether you are suggesting that a local community should have a veto on any development in any planning circumstances if it feels that the test had not been met.

Patrick Harvie: My question is whether the policy will ensure that the community’s perception and judgment are part of the consideration.

Johann Lamont: The two tests are that a development should be environmentally acceptable and that there should be community benefit, and the authority would have to show why it believed that those tests had been met. If the authority had not spoken to anybody and had not involved itself with and engaged with the local community, it would be difficult to see how there could have been transparent consideration of the evidence and how a conclusion could have been reached that there was community benefit. The

issue seems to me to be straightforward. It would be for the planning authority to make a judgment. The logic of your position is that the local community should basically be asked whether something is acceptable—it would be up to the community to say yes or no. In that case, the planning authority would not have the same role.

10:15

Patrick Harvie: Let me make a comparison. I am led to believe that mineral planning guidance note 3 says that developments must be acceptable to local communities, whereas SPP 16 says that the planning authorities are the ones that make that judgment. Is that correct?

Alan Denham (Scottish Executive Development Department): The decision is taken by the planning authority, which has to have regard to the views of the local community. The purpose of SPP 16 is to strengthen the role of the local community. We might get on to a discussion of the 500m separation distance, which is an example of greater strength and security being given to the interests of the local community. However, ultimately, it is for the planning authority in which the proposal rests to make that decision, and it will have regard to the views and concerns that are expressed by the local community.

Patrick Harvie: Can you reassure Friends of the Earth and the community groups that have spoken to us about their concerns that SPP 16 gives adequate protection to communities that feel that developments are not acceptable?

Johann Lamont: The policy has been driven by an understanding of the experience of local communities. We have developed the policy because we recognise the fact that communities have been badly served in the past—or have, at least, felt that they have been badly served—and we feel that this policy improves their position. It identifies the fact that they have a role to play as the proposals are considered and decisions are made. That is not the same as saying that whatever a community group feels will determine the ultimate decisions, as that would be devolving responsibility to that group. Nevertheless, SPP 16 says that any planning authority that is making a decision on a development has to understand properly and address the concerns of local communities.

Patrick Harvie: My final question in this section is based on comments that were made last week by the Scottish Society of Directors of Planning about the operation of trust funds and other kinds of financial benefit that are provided. What is your view on the need to maintain a separation of those from the material considerations in the planning decision that is being made? The concern was, in

the words of Richard Hartland, that we should ensure

“that communities do not view operators as buying planning permission”.—[*Official Report, Communities Committee*, 2 March 2005; c 1809.]

Johann Lamont: Both tests will still have to be met, no matter how many wonderful things are promised for the local community. That is a broader planning issue that people are aware of. Engagement with the community by the developer has to be real. It is not about what the developer can promise the community in order to get the thing sorted; it is about ensuring that developments in local communities generate economic or community benefit, that they are environmentally acceptable and that the community can live with them. In some circumstances in the past—not specifically in relation to opencast developments, but more generally—the process has led to feelings of distrust because that type of bargaining game has been people’s experience of negotiation with the developer.

The Convener: Christine Grahame, too, has indicated an interest in the issue.

Christine Grahame: It is all right. Patrick Harvie has asked about what I was going to ask about—the business of to whom the development has to be acceptable. We have dealt with that.

Cathie Craigie: The presumption against opencast mining has generated a lot of interest in the committee and more widely. Did the Executive consider using the procedure that is now used in the consideration of planning applications for telephone masts from companies in the telecommunications industry? Before submitting an application, a company has to go through a consultation process with the local community. Was that considered in any way?

Johann Lamont: Good practice in involving communities is to be encouraged. An obvious example of communities being listened to relates to the 500m separation distance, which reflects previous experience. As local members will know, no matter how good practice is in dealing with planning applications for telecoms masts, people are unhappy if the masts are at their door. The difficulty is that even where there is good practice and a lot of engagement, if someone is not happy with the final decision, they will remain concerned about it. However, it is important to work through issues with communities, so that they feel that they are being taken seriously.

Cathie Craigie: The point is that there is no presumption against the erection of telecommunications masts, but there is a requirement that a company must demonstrate that it has consulted the local community and tried

to address some of its concerns before the local authority will consider the application.

Johann Lamont: If one of the tests is that there will be community benefit, how could a developer establish that unless it could give evidence that it had worked with the local community and persuaded it or suggested to it what the benefits would be?

Cathie Craigie: So it is your intention that any company applying for opencast would consult the local community before an application was submitted.

Johann Lamont: I would certainly hope so.

Alan Denham: Yes. We will also look at the planning bill to strengthen that provision.

The Convener: Minister, before we move on I want to ask a supplementary to the questions asked by Patrick Harvie, about the robustness of guidance to planning authorities that will take the ultimate decision on whether an application passes the community benefit test. In my experience—from which the concerns of Friends of the Earth stem—Greengairs community in my constituency, which we heard from last week, feels that it has an unacceptable burden of certain types of development. Communities such as Greengairs are looking for reassurance that their concerns and beliefs about what is in their interests will be acknowledged by local authorities, because local authorities might have a different view of what is in a community's interest. What monitoring will there be of the effectiveness and implementation of the community benefit test?

Johann Lamont: Draft SPP 16 recognises that cumulative effects are significant in some places. If it is relevant, an assessment of the likely cumulative impacts must be carried out. If such impacts cannot be adequately mitigated, planning permission should be refused. It is recognised that some of our communities have carried a greater burden than others have. However, the broader issue of the need for community involvement and engagement and so on is a thread running through the policy, and it demonstrates why the policy is important.

Mary Scanlon (Highlands and Islands) (Con): I will follow the convener's earlier line of questioning about extending the presumption against development. I heard what you said about the long-standing political commitment and the tests. Do you have any plans to introduce the "presumption against" terminology in other areas of planning? Specifically, although there are no opencast mines in the Highlands, communities are seriously concerned about wind farm developments and the fact that they have little say. Are you considering extending the presumption against development now or later?

Johann Lamont: Some matters will be dealt with under broader planning legislation and people will have opportunities to raise such issues if they wish to. I am not sure whether wind farm developers have treated local communities in the way that some communities near opencast coal mines felt that they were treated—they had blasting right beside their doors and so on. I do not know whether the two situations are comparable. Under planning legislation, all those issues will be explored, but the Executive has no commitment to adopt a presumption against development in other policies. I have explained how we reached the position on opencast mining.

Mary Scanlon: Do you intend to extend SPP 16 to cover other mineral extractions, timber and contaminated land?

Johann Lamont: We have a separate policy on mineral workings. We can obtain its number for you.

Mary Scanlon: Do you intend to extend the presumption against development to mineral extractions and timber?

Johann Lamont: The presumption against development relates to opencast mining. Whether other examples of bad practice exist is a separate matter that has no impact on the view that is taken on SPP 16. Through planning discussions, all such matters may emerge.

A view must be taken on whether a presumption against opencast mining is reasonable and whether it gives communities and developers a level playing field. Whether other developments have been experienced in the same way should not shape the view that is taken.

Mary Scanlon: You say that the presumption against development is being introduced to address bad practice in the opencast industry that does not exist in other industries.

Johann Lamont: The original national planning policy guideline was developed to deal with people's concerns about opencast mining. The changes—some of which are far more important than the presumption against development—were prompted by a review of the guideline's impact. One concern for communities was that Scotland did not have the entitlements that were available south of the border. The change has been made to address that concern. We cannot say that SPP 16 concerns only the presumption against development; it deals with a range of matters that relate to people's experience of opencast mining.

Mr John Home Robertson (East Lothian) (Lab): The minister has answered many questions about the presumption against development. I invite her to talk about the background—the presumption in favour of development that was in

place until 1999, when many of us could cite constituency experiences of communities that were under siege from proposed opencast developments. Even if an application was turned down, a developer would simply return with another application. The background of the presumption in favour of development has made the policy necessary. Will you say why the Executive rejected the regime that applied before 1999?

Johann Lamont: Communities and their representatives have highlighted those communities' experience, which explains the political context in which the incoming Labour Government took action on opencast mining because it was such an issue that communities were not involved, that engagement was lacking and that unacceptable practices were being followed.

We have attempted to understand and reflect on that experience and to work with the industry, which wants to be properly regulated and workable and wants to work in harmony with local communities. There are good examples of the industry doing that. The industry has mitigated the actions in the past of parts of the industry.

John Home Robertson is right to highlight the fact that the policy did not come from nowhere; it was prompted by people's experience that the industry was not challenged or under pressure to relate to local communities.

Christine Grahame: I associate myself with Mary Scanlon's remark that once one opens the door to a presumption against development when communities feel particularly disadvantaged by environmental disruption, that could be extended to wind farms or other developments. If you do not take that direction and instead choose to single out opencast developments—although I am very much in favour of a presumption against them—general planning law may need to include the remedy of a third-party right of appeal in particular circumstances. If you choose not to have presumptions against other types of development, communities will need to feel that they have a remedy that allows them to take action against proposed developments on their doorsteps, which they do not have at present. Will you comment on that?

10:30

Johann Lamont: The Executive is developing its view on planning policy and the proposed planning bill. As part of that, the strongly held views on a third-party right of appeal will be examined. One of the drivers of those views is people's feeling that they have fewer rights, that their views have not been properly included and

that the system has not engaged them. We are considering a planning process that involves people. Any discussion about whether the process should technically include a third-party right of appeal must be shaped by the fact that the issue drives many people's concerns.

Cathie Craigie: My question is also on the presumption against opencast developments, convener. Sorry, I mean minister—I am still not used to you sitting at the other side of the table. Last week, we heard evidence from representatives of trade unions and the coal industry, who were concerned that a presumption against developments would result in jobs being lost in the industry in Scotland. They feel that their fears are real given the experience south of the border with MPG 3, which was introduced several years ago. They claim that they have evidence that substantiates their fears. Do you have any comments on that?

Johann Lamont: We take it seriously when the industry and trade unions raise concerns about job losses. In their view, there is a direct connection between the phrase "presumption against" and job losses down south, but I do not think that a direct correlation can be made. The draft guidance is clear that employment is to be considered as a benefit in assessing proposals. If it is established that a development would provide good jobs, the presumption against should not attack the industry.

As I have said, the idea that the presumption against developments will have a significant impact on jobs is not supported by independent research or by most local authorities that have coal mining in their areas—in general, they regard the proposal as policy neutral. The situation in England is different. I understand that there has been an expectation that, in some cases, both tests must be passed in order for planning permission to be granted, but that is not what our draft policy guidance states. That might help to explain the situation.

Like all planning policies, SPP 16 will be kept under review and, if trends emerge that give concerns, it will have to be examined. The intention is not to close down the industry, but to recognise that it can contribute to the local economy. Any such contribution would be deemed a benefit for the purpose of assessing proposals.

Cathie Craigie: Friends of the Earth Scotland told the committee last week that jobs might be lost in the industry in Scotland because of SPP 16 and suggested that aid should be made available to those who lose jobs. If jobs were lost, would the Executive consider providing assistance or aid?

Johann Lamont: Obviously, the view of the Executive is that jobs should not be lost as a

consequence of planning policy. However, we are always committed, when there are job losses in any sector, to providing support to people to enable them to get into other work and we are committed to supporting local communities. For example, the Coalfields Regeneration Trust was established in recognition of the fact that a shift was taking place—a significant industry that supported local communities was closing down. I do not believe that such a situation will occur as a consequence of the new planning policy, but I regard it as good enterprise and employment practice for us to address employment issues where they arise. However, I do not think that that issue applies specifically to the new planning policy.

The Convener: How will the Scottish Executive monitor the impact of SPP 16, if it is implemented in the form in which it has been consulted on? Will you revisit the issue if in two years' time it becomes apparent that, as some people have suggested, applications are not being approved?

Johann Lamont: Planning policy must be kept under review constantly—for example, to keep up with technological developments or to take account of a report that indicates health issues. As I have said, SPP 16 will be no exception in that respect. If emerging trends give us concern, the issues will be addressed. If SPP 16 is agreed and in two years' time, or whenever, people say that there is a huge decline in the industry and make a connection between the two, it will be necessary to explore whether there is such a connection. The issue will not have been parked; it is good planning practice always to review such matters.

Linda Fabiani: We know that a lot of permissions have already been given and that there are still five or six years' work, so it is the longer term that is particularly worrying for the industry. Will you monitor the situation in the longer term? Concerns have been expressed to me that an easy option for local authorities—which, as John Home Robertson will deal with shortly, lack resources for enforcement, among other things—will be not to grant permission at all.

Johann Lamont: I am not sure why that would be the easy option.

Linda Fabiani: The perception that I have had relayed to me is that, if local authorities feel under-resourced and think that they will have a lot of enforcement and a lot more work to do because of the new planning guidelines, they may find it easier to say, "The case is not proven here so we cannot give permission."

Johann Lamont: We would be disturbed if we thought that local authorities would not carry out their duties appropriately in relation to planning permission because they felt that they were not

properly resourced. We have already said that we are conducting research on the resource issue. That is a matter for discussion with local planning authorities. I do not expect that what you suggest would be a consequence of SPP 16 but, if that is what is being said, we will examine the issue. We are considering in relation to planning generally how the different bits of the legislation work and how we can get as much as possible of the process done at a local level. That is about having active and thorough planning authorities.

Mr Home Robertson: I will move on to enforcement and monitoring. I am sure that we all welcome the evidence of better co-operation between opencast operators, local communities and local authorities, which may or may not be connected with the introduction of new planning rules. However, as you have acknowledged, minister, the background is one of a lack of trust and bad experiences. We have received evidence that it can be difficult or indeed impossible for local authorities to enforce effectively planning conditions on noise, working times and access routes. Do you agree with those local community groups that have said that local authorities are failing to enforce planning conditions on the operation of opencast coal sites due to a lack of resources?

Johann Lamont: We are trying to assist local authorities in carrying out their responsibilities to address people's concerns about opencast. I would not want to say that the situation was all the fault of the local authorities and that they are not doing things properly. There are good examples—I mentioned East Ayrshire—where local authorities are engaging with the industry and the community to put in conditions.

Mr Home Robertson: The point is that, with the best will in the world, monitoring is difficult, because of the need for specialised staff and resources. I cited examples from an opencast site that was on my patch many years ago. There were complaints about noise and, in due course, the local authority got around to installing noise monitoring equipment in the neighbourhood. By a strange coincidence, whenever that equipment was deployed, there were no complaints. You said that you are keen to encourage local authorities to do the job effectively. How? Are you proposing to provide extra resources, training and equipment?

Johann Lamont: The research that will appear at the end of April will reflect not just on financial resources, but on the implications for staff and so on. Again, those will be matters for the broader planning legislation. If we ask for more, that will have to be resourced properly. I have met representatives of local authorities, and work is being done on enforcement. More thorough consideration is being given to how the

enforcement regime can be changed. Local authorities have highlighted their frustration about the fact that, if there is no robust enforcement regime, the planning system is undermined entirely. If we front-load the system and impose a lot of conditions, but fail to enforce them, that has an impact on the way in which people engage with the process at an early stage.

Enforcement of planning control is primarily the responsibility of the relevant local planning authority. There is evidence that authorities do not always make use of the powers that they have, so we need to engage in discussion about that. We also need to consider whether further powers are needed and what resources are attached to that. I am confident that those issues will feature prominently in the debate on the planning legislation. As I have said, if conditions are not enforced, people will agree to those conditions more lightly. There is also the issue of the conditions that are imposed. There is a marginal discussion about ensuring at an early stage that the conditions that are attached are robust and enforceable. That raises the issue of professional development and support for planners and planning authorities.

Mr Home Robertson: The suggestion that the Executive will help to improve the enforcement regime is welcome. I draw your attention to the evidence that we have received from the Scottish Society of Directors of Planning, which said that the regime was cumbersome. You may want to consider that point.

I move on to the issue of fees—who pays the cost of enforcement. I see that CoalPro has expressed a willingness to finance monitoring and enforcement. Scottish Coal has suggested that local authorities should pay and be reimbursed by coal operators. What are the Executive's plans for changing the regime for enforcement and monitoring? Can you give details of the objectives of and timetable for the changes?

Johann Lamont: We welcome CoalPro's commitment to finance monitoring and enforcement. Our intention is that each year planning authorities should carry out a number of monitoring visits to all mineral sites in their area. The authorities would need to compile short reports on the results of each monitoring visit and provide an annual report, so that communities could see the results. Councils would receive a fee from the developer for each visit. Using the model that CoalPro has identified, we would establish a fees regime where that has not been done.

Mr Home Robertson: So the intention is that the industry, rather than the council tax payer, should meet the cost of monitoring.

Johann Lamont: Yes.

Scott Barrie: If, as the coal industry is suggesting, SSP 16 leads to a decrease in Scottish coal production, we will have to import more coal, because in the short to medium term we will need the same amount of coal—we will still require a lot of coal to generate electricity at Longannet power station, for example. I grant that the situation that I describe is hypothetical, but operators have expressed concern that other countries' environmental standards in coal production are much lower than those in the United Kingdom. Do you wish to comment on that issue?

10:45

Johann Lamont: As I have said, if there was evidence of decline in the industry and that decline appeared to be the result of over-rigorous application of the guidance or there was some sense that the tests were not being carried out properly, we would keep the matter under review. If we set environmental and community benefit standards that were undercut elsewhere by folk who did not have the same standards, what position would it be logical to adopt? Should we not have those standards on the ground that there will always be someone who is worse than us and we are just encouraging them? I do not think that that position would be sustainable.

We must identify the most balanced approach that meets the needs of communities and of the industry. If the consequence of that approach is that the tests cannot be met, there is not a community benefit and the practice is not environmentally acceptable, it seems reasonable to expect that planning permission would not be granted.

Scott Barrie: I have a small question on a related issue. If we have to import more coal, regardless of where it comes from, what will be the future impact on the power generation industry in Scotland?

Johann Lamont: As a local member who is more technically up to speed on such matters, you have the advantage of me. I assure you that it is not my view or that of the Executive that the planning proposal will impact on the power generation industry. If the planning proposal were to have such an impact, that would be a matter for decision by the appropriate Government ministers, as issues that relate to energy policy remain the responsibility of Westminster.

Christine Grahame: I will move on to separation distances, which are dealt with in paragraph 11 of draft SPP 16. The proposal on a distance of 500m is only a general rule and there is the possibility that it could be varied to

"a greater or lesser distance".

I suspect that if the separation distance were to be varied, it would probably be varied to a lesser distance.

You have already talked about landscaping. My interpretation of what you said is that you have listened to concerns and that if there was a proposal to have landscaping less than 500m from a community, you would consider it favourably. The same issue applies to access roads. It could be argued that if an access road had to be 500m away from a community, that requirement would prevent development from taking place.

Witnesses who were firmly opposed to there being an ability to vary the 500m argued that, more often than not, planning authorities would use it to have a lesser distance. Would you consider the possibility of having an absolute 500m rule for the distance between a site boundary and an adjacent community and, in certain circumstances, having an inner and an outer cordon, as was proposed under the charging regime for Edinburgh that was rejected? Would it be possible to have, say, a 100m rule for landscaping and access roads, on the understanding that they would be the only things that could be nearer than 500m? Would that resolve the conflicts? It would give people surety. The proposed discretion does not give developers or communities surety.

Ian Mitchell (Scottish Executive Development Department): The original suggestion was that there should be a separation distance of 500m, but the industry came back to us and said that work that is of benefit, such as protective landscaping, sometimes takes place less than 500m away from a community. We might reconsider that aspect closely to determine whether such an allowance can be made.

Christine Grahame: I heard that, but my suggestion relates not only to landscaping that may be beneficial to a community, but to access roads, which are another problem that has been raised. I ask the minister to consider having an absolute separation distance of 500m. The present rule is not absolute. The fact that the separation distance is discretionary takes surety away from communities. They do not know whether work will be allowed to take place less than 500m away because paragraph 11 of SPP 16 talks about account being taken of such matters as

“prevailing wind direction and visibility”.

Will you consider having an absolute 500m rule governing the distance from a site boundary to the adjacent community if, within that, there was a 100m rule for access roads and landscaping, which could be deemed not to impinge on the community? That would be better than giving planning authorities discretion.

Johann Lamont: The purpose of the 500m separation distance is to give people certainty and some security. It also reflects the fact that one of the most controversial aspects of the present policy is the provision about the distance between communities and the working face, which does not give people the security that they want. I can check, for clarification, but my view is that the 500m buffer is a standard from which an exception would be made. If there is a need for landscaping and so on, operators can have flexibility and can negotiate that with the local community. The discretion exists in order to give that flexibility, but not to the extent that the provision becomes meaningless.

Christine Grahame: Draft SPP 16 refers to “a general rule” but it states:

“However, the topography, the nature of the landscape, the respective location of the site and the nearest community in relation to the prevailing wind direction and visibility may justify the distance being tailored”.

The provision is not as firmly stated as you suggest. There would be exceptions.

Johann Lamont: The issue for the planning authority is that such cases would have to be justified.

Christine Grahame: I want to pursue the point, because we cannot amend SPP 16. I appreciate that the process is different, but is there room in your thoughts to tighten the provision and give more certainty and security to communities? You said that the test is whether the proposal is acceptable, but I take it that that means acceptable to the planners—taking into account the community and so on—rather than acceptable to the community. In many respects, the issue for the community is how close the development will be. There would be more surety and security for the community if the provision was tougher. People might think that there is too much discretion for the developers and planners and not enough for their communities.

Johann Lamont: The policy intention is to give security and confidence. We recognise that the 500m distance has been a controversial element. If the committee is highlighting the issue as one that should be considered further, I am happy at least to look at it, but the policy intention of the flexibility is driven by good reasons. We do not seek to give people a loophole or to say, “The separation distance is 500m but if you can think of any old reason for reducing it, fair enough. We do not have any expectation that you will have any regard to the 500m.” We recognise the importance of separation and we aim to give communities certainty. If, as seems to be your anxiety, the provision may be interpreted so flexibly that there will be no certainty and communities will not get that separation, it seems to me that the policy intention that we have identified will have failed.

Christine Grahame: It is for the committee to decide whether it wants to suggest new wording to tighten up the provision and give communities more certainty on separation distances, or to propose some other way of firming up what the Executive says.

As a postscript to that, the manufacturers and producers oppose the separation distance and say that it would inhibit and sterilise reserves on their coal sites, although we know that some 50 million tonnes is already up for grabs, which will take care of the next six or seven years of production. Do you agree that the separation distance will sterilise the industry?

Johann Lamont: We have said that it is reasonable for communities to have an expectation of certainty about the buffer zone. I note that operators in East Ayrshire, which have been commended for their good practice, have developed the view that there should be a 500m buffer zone. The local authority and local communities get employment benefits from the industry. They are not against it, but recognise that it is worth while.

Cathie Craigie: Earlier, you said that the presumption against is policy neutral. I think that the information that the committee has received on the matter is neutral. It is probably right to leave a bit of leeway in the provision. You also mentioned the experience of East Ayrshire, where the 500m separation distance works well. Last week, we heard evidence about St Ninians in Fife, where a protocol has been established locally between the industry and the community because of the fact that, although the workings of the site are at least 500m away from the houses, the perimeter of the site and the roads within it are closer than that. When the Scottish Executive was developing its views on the separation distances, were both those examples taken into account?

Alan Denham: I do not think that we were aware of the St Ninians example, but we were aware of what was happening in East Ayrshire. We believe that we need to take a cautious approach, because roads that are within 500m of the houses could generate dust and particulates.

Cathie Craigie: The representative of the National Union of Mineworkers whom we spoke to last week argued strongly against what community groups had been saying on that point. The NUM is trying to ensure that the industry is safe for its members to work in. You seem to be suggesting that it is not safe to work that close to the sites.

Alan Denham: I imagine that the working conditions of the NUM members will be controlled by health and safety legislation. Safeguards should be in place to deal with any contraventions of that legislation.

Johann Lamont: The question of flexibility relates to the benefits that could be brought to the producer and the developer. It would be unfortunate if what had been signed up to by everyone was so rigid that it prevented flexibility. However, it is also fair to say that people's views are influenced strongly by their experience of opencast mining in the past.

Mary Scanlon: I would like to ask about the definition of a community. Draft SPP 16 proposes that

"individual/clusters of dwellings and sensitive establishments outwith defined communities"

should be included within that definition. Last week, Scotland Opposing Opencast raised concerns that the wording on that is ambiguous. The group's submission said that that

"could result in the 500m separation distance being disregarded for applications in the immediate vicinity of what would have previously constituted a community."

We also heard from—[*Interruption.*] Someone has not switched off their phone.

The Convener: Someone did not listen to my earlier warning about switching phones off. I also remind members who are visiting the committee that, if they wish to conduct conversations, they should do so outwith the committee room so that the minister can hear committee members' questions.

Mary Scanlon: We also heard from the Douglas valley residents, who said that the definition should include any land on which there is accommodation. Do you have any comments on the views of the community groups?

Johann Lamont: The feeling was that the local authority level was the most appropriate level for the decision to be taken about whether a group of houses constituted a community. Communities are scattered and organised in different ways across Scotland. Local authorities are the organisations that are best placed to make such decisions. It might be that, in certain circumstances, a group of fewer than 10 houses or even a single dwelling would be defined as a community that could be impacted on by a development. That possibility is not excluded.

Mary Scanlon: What impact do you think that the change in the definition from one in which a community is made up of 10 or more houses to one that states that a community need simply be a "small group of houses" will have?

Johann Lamont: As I have said, the expectation is that operators and planning authorities will ensure that there are no significant adverse effects on individual dwellings, clusters of dwellings or sensitive establishments outwith defined communities. We are trying to be more

inclusive and recognise the fact that patterns of dwellings vary considerably across Scotland. The proposal is meant to ensure that those living outwith communities are not subjected to unacceptable impacts.

Mary Scanlon: Do you feel that local authorities are best placed to take into account community groups' concerns and to make their decisions on that basis, no matter whether we are talking about one, 10 or 100 houses?

Johann Lamont: Yes, and they are also locally accountable.

11:00

Cathie Craigie: I think that all my questions on that matter have been answered.

The Convener: No, Cathie—we have moved on to questions about supporting information.

Cathie Craigie: Okay. I did not realise that we had got that far.

Johann Lamont: How time flies.

Cathie Craigie: I know.

The Convener: I am sure that it is not flying for the minister, and there is still some way to go.

Cathie Craigie: I asked earlier about information that applicants might have to provide before the formal planning process begins. Could the section on supporting information from operators to planning authorities be improved to ensure that more information was available to communities?

Johann Lamont: People are keen that, in the interests of transparency, as much relevant information as possible is available with regard to any application.

Earlier, I touched on what might be a side issue. One means of providing certainty is to ensure that people are upfront about what they are applying for, which is why we have addressed the issue of extensions. If people are upfront about their intentions, communities will know what they are engaging with.

Cathie Craigie: In its evidence, FOES stated that applicants should be required to divulge all information and interests in all coal reserves in an area, and it suggested that penalties be imposed for non-compliance or inaccurate disclosure of information. In the past, applicants have changed their names on applications or have encouraged other operators to apply. What is your response to those concerns?

Johann Lamont: We are trying to ensure that developers genuinely engage with the process. Surely the greatest encouragement would be to

make such engagement and the establishment of community benefit part of the process of securing planning permission. Simply to say that such engagement will take place does not make it so, and we have underpinned that approach with a commitment on certainty.

As a result, there are incentives for developers to engage with communities. The draft planning guidance sets out rules of engagement to encourage developers to do exactly that, because with the establishment of a presumption against them, developers will have to meet certain tests. For example, the reasons why a planning authority has taken a certain view must be evident.

Donald Gorrie: I believe that you were, as the committee was, impressed by East Ayrshire Council's performance. Could the Executive encourage other councils to adopt or learn from that local authority's practices? In its subject plan, East Ayrshire Council said that it had more trouble with sand or gravel extraction businesses than with coal extraction businesses. Does your guidance to councils cover all extractive activities?

Johann Lamont: On your first question, I believe that good practice should always be shared. I do not have the feeling that other local authorities do not want to learn from East Ayrshire Council's good practice. We have already indicated that good practice by individual developments in other places should also be considered—I certainly want to encourage that approach. I do not know whether such matters concentrate people's minds, but they might take note of the fact that the council has won a very prestigious award in this regard.

On your second question, I point out that the planning guidance deals with opencast mining and that concerns about related issues will be dealt with by other planning policy guidelines.

Alan Denham: We will shortly publish draft SPP 4 on mineral working, which will apply to mineral workings other than opencast coal mines. As Donald Gorrie said, many of the issues are similar. We will certainly address the relationship between mineral working and the community interest as part of that forthcoming policy, which will go out for consultation, as was the case with opencast coal mining.

Donald Gorrie: Places such as Greengairs have had a lot of trouble with landfill activities. Will your study cover that as well as extraction?

Alan Denham: No. There is a separate Scottish planning policy on waste disposal. In planning terms, landfill is significant.

Christine Grahame: I have a question on health and the impact of opencast mining on communities. I refer to the report that was

produced by reporters to the Transport and the Environment Committee in 2002. I will quote a bit about research and evidence from the Committee on the Medical Effects of Air Pollutants. Its report states:

"COMEAP concluded that 'It is more likely than not that a causal association exists between long term exposure to particles and mortality.' However, COMEAP cautions that 'the composition of the particles is important; it can by no means be assumed that these results extend to pollution climates very different from those typical of US cities.'"

There was US research. The report continues:

"The Executive's response states that—

'Recognising the various uncertainties arising from US studies, our colleagues in the Scottish Executive Health Department endorse the view of COMEAP that "These uncertainties need to be addressed by further research.'"

Further on, the report states:

"the Reporters recommend that the further research into the 'uncertainties' highlighted in the Executive's response is carried out as soon as possible. In this context, the Reporters also note the comparative lack of research conducted specifically in Scotland on the health impact of opencast developments."

Last week I asked a representative of SOOT whether there had been any research; he said that there had not, so I suggested that I might ask you whether there had been any research following the former Transport and the Environment Committee's recommendation.

Johann Lamont: Research on the health effects of opencast mining was published in 1999 and was endorsed by COMEAP. The then Minister for Health and Community Care confirmed subsequently that, given the COMEAP research, there were no strong indications that further research on the impact of opencast mining on public health should be regarded as a priority.

There is evidence to suggest that more work should be done on the general relationship between airborne particles and ill health. That is on-going and would impact on opencast mining. Ministers have undertaken always to ensure that planning guidance reflects the view of health experts. Research would not necessarily be focused on opencast mining, but would encapsulate it. That undertaking remains in place.

Christine Grahame: That does not answer the particular point that a comparative lack of research was conducted specifically in Scotland. It is my understanding that the boundary bunds, which are often closer to communities than are the mining operation itself, can be far more dangerous to health. Has any specific research been done in Scotland on that since the Transport and the Environment Committee's report was published?

Ian Mitchell: I spoke to our Health Department colleagues last week, who identified research that

is being carried out. The University of Strathclyde, the Institute of Occupational Medicine and the London school of hygiene and tropical medicine are all doing research on particulates. The American study that people keep talking about is reviewed periodically and COMEAP is working on a report on the effects of air pollution. Our health colleagues are keeping an eye on those studies.

Christine Grahame: Is the first lot of research to which you referred—the new research—being done on Scotland specifically?

Ian Mitchell: Most of the research is being done in Scotland. It is funded by the Health Department.

Christine Grahame: When will it be reported?

Ian Mitchell: I am not sure about the exact reporting dates, but we can let you have that information.

Christine Grahame: Thank you.

Linda Fabiani: I have a question about environmental impact assessments. There is a perception that they are always weighted in favour of the developer. For example, Dr John Munro from SOOT stated:

"Environmental impact assessments vary hugely in quality. They are ... sometimes ... not only misleading, but inaccurate."—[*Official Report, Communities Committee, 2 March 2005; c 1759.*]

Dr Munro suggested that councils should be able to draw up a panel of independent assessors. The developer would choose from that list an assessor who would be paid by the developer to produce the environmental impact study. Niall Crabb from Scottish Coal said that his firm would be happy to agree to Dr Munro's perfectly acceptable suggestion. What is your view?

Johann Lamont: Is the question about environmental statements in particular?

Linda Fabiani: Yes. I refer to the environmental impact assessments that are commissioned at the start of the planning process.

Johann Lamont: The Executive has commissioned research to examine the implementation of environmental impact assessment regulations. The research will consider how environmental impact assessments work in practice and the extent to which they are delivering on environmental issues. Considerations in respect of the general quality of environmental statements will be taken into account. The issues to which Linda Fabiani referred may be explored further in that research.

Linda Fabiani: I think that Dr Munro's proposal was more specific. Whether or not the perception is valid, environmental impact assessments that are carried out by the developer are perceived to be not quite neutral. The problem and people's

concerns might be alleviated if we had an independent panel of assessors to be used at the very beginning of the planning process. Developers such as Scottish Coal seem to be quite happy to go down the route of funding independent assessment. Might that be a way to alleviate concerns?

Johann Lamont: Those matters can perhaps be explored further, but the process already includes statutory consultation of environmental bodies, such as the Scottish Environment Protection Agency and Scottish Natural Heritage, and of the public. It is for the planning authority to evaluate the environmental statement. In doing so, it must take into account advice from consultees and it must confirm the statement's validity. If a planning authority believes that a statement is deficient in any respect, it can require further environmental information to be submitted by the applicant. That might address some of the concerns that Linda Fabiani has mentioned.

If there is a view that planning authorities do not pursue their responsibilities strongly enough, that might reinforce the view that Linda Fabiani expressed. However, I believe that we need to get planning authorities to take their responsibilities seriously and be seen to do so.

Linda Fabiani: I did not suggest that planning authorities do not take their responsibilities seriously, but we are aware that planning authorities are sometimes under-resourced. A panel of independent assessors might benefit the planning authority, the developer and—most of all—communities.

Johann Lamont: We will certainly consider the issue in the context of our broader consideration of planning policy.

Mr Home Robertson: I have a couple more general questions on planning and energy strategies. How does SPP 16 fit into the wider process of the Executive's planning strategy and the forthcoming white paper on planning, in particular with regard to community involvement?

Johann Lamont: Obviously, we are still developing our planning proposals. As members will know, we want to modernise and speed up the planning process and to encourage further community engagement in it. We also want to address the concerns that have caused the build-up of distrust. Social inclusion and awareness of the impact of developments will also be embedded in our planning proposals. In their final form, the proposals will go with the grain of SPP 16. There will be recognition of the constant need to strike a balance within the planning process.

Mr Home Robertson: On planning for the energy industry of the future, does the Executive intend to integrate the policy on opencast mining

with its other energy policies, such as its policy on wind farms?

Johann Lamont: It is obviously a good idea to have integration and harmony where possible, but one policy is not consequent upon the other. We need to develop planning policies across the range of issues that people need to have planning policies for. As was mentioned already, modern technology continues to develop apace and the planning process needs to keep up with that. We would not expect anything other than harmony between, and logical consequences arising from, policies.

Mr Home Robertson: As the minister might expect, my final question is on co-ordination of planning policies with electricity generation and energy needs. You are probably aware that there is quite a lot of ageing generating plant in Scotland, which will have to be replaced if we are to retain secure supplies and valuable jobs in East Lothian—my constituency—and many other parts of Scotland. Will the minister acknowledge the importance of the electricity generation industry for the environment and the economy in Scotland? Will she bear that in mind as she frames planning policies that will cover everything from opencast mining to wind generation?

11:15

Johann Lamont: There are broader views on such matters, which will be determined by ministers other than the minister who has responsibility for planning, and which relate not just to energy policy in general at United Kingdom level but to energy supply. I do not want to stray far into such areas, but I am keen to ensure that our planning process does not inhibit policy development. It is logical that the planning process should underpin, rather than work counter to, the policy view that the Executive takes on a matter.

The Convener: A number of members of the Scottish Parliament who are not members of the Communities Committee have joined us, but I am conscious that the minister has been answering questions for more than an hour and a half. I will allow each visiting member to ask one short question. Please reflect on what you have heard and ask questions that will generate additional value rather than revisit areas of questioning that have been pursued by committee members, who listened to the evidence that was given at last week's meeting.

David Mundell (South of Scotland) (Con): I, too, had the benefit of hearing last week's evidence, which the minister said she read. At that meeting, Mr McLaren from Friends of the Earth Scotland made a point that I do not think has been picked up today. He suggested that a benefit of

the proposed new policy is that it would weed out some applications and ensure that new applications from the industry are substantive. Communities are concerned not just by development but by the potential for development, and myriad applications generate concern in communities, which leads to the distrust to which the minister referred. Do you agree with Mr McLaren that the policy that SPP 16 sets out would weed out applications that were less certain, if not spurious, and ensure that new applications were substantive and in accordance with best practice?

Johann Lamont: I looked at the evidence, but I did not memorise it, so I will not create a hostage to fortune by agreeing with a comment that I do not have in front of me. However, I acknowledge that it is important for communities that there is certainty and, as I said, that the planning and development process can be engaged in seriously. We expect proposals to be serious and credible. We have also said that over time the industry has considered its reputation and the benefits of working with communities, which has concentrated minds. The proposed new guidelines will assist in that.

Mr Adam Ingram (South of Scotland) (SNP): The work of the Transport and the Environment Committee in the first session of Parliament in respect of petitions that related to opencast mining was mentioned. I was one of that committee's reporters on the matter, so I am pleased that the draft guidelines address many of the concerns that were expressed then.

However, the long-term health impact of opencast mining remains a concern. American research seems to indicate that there is a causal link between long-term exposure to airborne particulate matter and life expectancy. We know that respiratory disease is much more prevalent in opencast mining areas; that is certainly the case in East Ayrshire compared with the rest of Ayrshire and, indeed, with Scotland as a whole.

The independent research that you mentioned advocates funding of more research. In the meantime, should not the precautionary principle be brought to bear when we are talking about tightening up the planning guidelines? In that respect, separation distances are absolutely crucial.

I participated in the local public inquiry into the preparation of the East Ayrshire opencast mining plan. The reporter at that inquiry recommended that 500m be the minimum distance in all circumstances. Evidence that we heard last week suggested that one of the few methods that we have for mitigating airborne dust is to remove workings from settlements as far as possible. Will you respond to those suggestions?

Johann Lamont: We have already covered many of the health issues, but I repeat that we will always ensure that planning guidance reflects the views of health experts. That is particular to this area, but it is also more generally related to research into airborne particles.

Where there have been opencast mining developments, local authorities are committed to the local communities and do not want to randomly create job opportunities that will kill people. We encourage people to take that seriously, but they do not need encouragement to do so because they recognise the problem. That approach continues and I am keen that any identified health research is reflected in the planning policy.

The point was made that the intention is that 500m separation distance be the norm in recognition of potential consequences—bunds and the impact of disruption were mentioned—but that there should also be flexibility for the distance to be negotiated. The 500m separation distance is not a trivial commitment in the planning policy, therefore one would deviate from it only in exceptional circumstances, which is when one would consider it and the communities would become engaged. I hope that that gives people reassurance. It is not my view that the intention of the proposal is to say 500m and for that not to mean anything. One would have to see the logic of allowing flexibility rather than presume that it is not hugely significant.

The Convener: I appreciate that Mr Ingram sat through the committee diligently this morning, but when you left the room very briefly, your colleague Christine Grahame pursued the issues that you have raised. You might find it helpful to refer to the *Official Report*, in which you will find extensive responses to some of the questions that were asked by Christine Grahame.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): Before I put my question, I ask the minister for clarification of one of her opening remarks. I think that I picked you up right when you said that since NPPG 16 came into force, output and employment levels have remained essentially the same. Is that correct?

Johann Lamont: Yes.

Alex Fergusson: I am very interested in that because the figures that I have from the Coal Authority suggest the opposite. The Coal Authority indicates that the number of employees has fallen from more than 2,500 to fewer than 500 and that output has fallen from 9 million tonnes to 1 million tonnes. Were you referring only to Scottish figures?

Johann Lamont: Yes.

Alex Fergusson: That is the clarification that I required, thank you.

You mentioned several times—as did other members—that a presumption against opencast mining is policy neutral as far as all studies show. As we heard last week in some very good evidence, that presumption against is not neutral when it comes to the emotive issues that are raised.

I repeat that I come to the debate entirely from a constituency point of view. I have some 200 constituents affected by the matter in Upper Nithsdale, many of whom have beaten a path to my door—or their representatives have—to raise their fears with me. As I said last week, some communities, such as Kirkconnel and Kelloholm, in my constituency, would welcome further opencast mining development and its part in ensuring local employment.

Everybody agrees with you that there is only really one substantive issue that divides opinion, which is the presumption against opencast mining development. Do you accept that the precautionary principle, to which Adam Ingram referred, can be brought to bear without the unnecessarily prescriptive and absolute wording of the presumption against opencast mining that is contained in SPP16?

Johann Lamont: That question goes back to some of what was said earlier. First, the fear around the employment issue is drawn from what is perceived to be the experience in England, where there has been a decline in the industry. However, it does not logically follow and the case has not been made that the presumption against opencast mining has led to that decline; other factors, including geography and so on, have made a difference. There is also a suggestion that the tests are not being applied in the same way in every case.

Secondly, where there is seen to be a community benefit from opencast mining and it is welcomed, there is nothing in the policy to prevent a development's being given planning permission. The presumption is against planning permission where the tests of environmental acceptability or community benefit, which includes employment benefit, cannot be met. There is nothing to fear for anybody who is working in a good, safe working environment in a well-regulated industry that relates to the local community. We should reflect on the fact that the industry made the same claims about the original policy. There might be a fear that SPP 16 is an attack on the industry, but it is an attack only on the bits of the industry that cause problems for communities. People should be comfortable with that.

On the last point about precaution and the

presumption against opencast mining development being rolled into one issue, I understand that Mr Ingram is suggesting that the guidance would work on the basis of the precaution that there may be health consequences of opencast mining. That is different from a presumption against the granting of planning permission unless a proposal is environmentally acceptable and provides a community benefit. Those are two separate matters. As I have said, it is my view that the presumption against opencast mining will not prevent opencast mining developments although it will, I hope, get rid of bad opencast mining developments that do not engage with their local communities. There is recognition that developments will create employment and community benefit in certain parts of the country.

Karen Gillon (Clydesdale) (Lab): I, too, have a constituency interest in the matter, given the large number of opencast mining sites in my constituency and the large number of men who are employed in the industry. My first question concerns separation distances. You said that you may be willing to look again at landscaping. I would like some clarification of what landscaping would include, because I am anxious to ensure that it does not include large overburden mounds. Your definition of landscaping and the industry's definition of landscaping might be very different. A large overburden mound on a community's doorstep can have a huge impact, and I would caution against that.

My second question concerns unemployment. I have been inundated with letters from employees of opencast mines in my constituency who say that their jobs are at risk. I read the guidance very carefully before I made my submission supporting it. Perhaps I have read it wrong or somebody else has read it wrong, so can you clarify exactly what is meant in the final paragraph of section 8 of the consultation draft by

"Where extraction generates employment which can be beneficial particularly in those rural areas where extraction takes place"?

Is the guidance saying that employment is a consideration if it is local employment in rural areas such as my constituency?

Johann Lamont: Yes.

Karen Gillon: Thank you.

Johann Lamont: On the issue of when landscaping is not landscaping, it is not landscaping when it is not something that people want. If it is trees and nice wee bits of whatever it is—I do not know what it would be—that is entirely logical. We do not put in a 500m buffer in order for people to carry out working by other names or to do the very things that people were unhappy with

in relation to opencasting. That is something that can easily be clarified and it would be clarified quickly if there were a proposal to move from the 500m limit. If, in negotiating with the local community, the operator said that the landscaping involved what you have described, I think that people would give a short answer.

The Convener: Communities that have to face the burden of opencast sometimes feel that they are fobbed off with trees. It is the easiest thing in the world for a developer to plant some trees, but there is more to environmental improvements to the local community than simply planting a few trees. There is also the issue of maintaining those trees and hedgerows, and proper consideration must be given to the environmental impact of any landscaping that a developer might undertake.

11:30

Johann Lamont: The key thing would be for developers to undertake the landscaping in consultation with the community. If developers are moving from the 500m separation distance, they would be expected to consult, so the issues that you raise could be addressed.

Christine Grahame: What you have said on the record about separation distances has been helpful. I suspect, however, that those words will not be read when the proposal becomes not draft guidance but guidance. Would you be prepared to insert in paragraph 11 of SPP 16 wording to the effect that, as you have said, the norm would be 500m and that only in exceptional circumstances would that be varied? Those are the words that you used and you will be able to read them in the *Official Report*. That wording would give far more strength to communities and to planners in knowing where they were than the current proposals would. Are you prepared to do that?

Johann Lamont: I will certainly take advice on how my words would fit in with planning language.

Christine Grahame: They were lovely words, minister.

Johann Lamont: However, it seems to me that the sense of what I said is the policy position. I shall take advice on that, but I do not think that there should be a difficulty. I am sure that those words will be quoted somewhere in future.

The Convener: With that, minister, I thank you very much for attending the committee and for giving us time to question you on the draft planning guidance on opencast coal.

The committee has now heard a considerable amount of evidence from a range of parties on the draft planning guidance. We should reflect on the evidence and consider whether to make any further representations on the issue. Before we

move on to item 5 and into private session, could committee members let me have their views on how they would like us to proceed?

Linda Fabiani: I am aware that this is not something that the committee can change, but there are a few points that I think are worth emphasising. First, there is a general concern that I picked up this week and last week. If the current enforcement procedures are not being properly utilised and are not working, will the new guidance really make a difference so that enforcement is properly carried out? That seems to be one of the main issues for communities.

That leads on to the point about the potential lack of resources, which local authorities say is the reason for the lack of enforcement. I am quite taken with the idea of environmental impact assessments being carried out by independent people on a panel. The minister has talked about the planning guidance weeding out the bad operators and keeping the good ones and I was heartened to hear from the Scottish Coal witnesses last week that they are open to all sorts of suggestions such as that. I would like the committee to ask the minister to consider whether environmental impact assessments could be carried out by an independent panel. That would be to the benefit of all—communities, good developers and councils—and could give everyone more confidence in the spirit of the guidance.

We should also note the commitment to on-going monitoring of applications and permissions. We know that there are reserves, so any effect on jobs, which is a valid concern, may not apply until further down the line, if at all. It would be good to ensure that the situation is being monitored so that, if it looks as though there will be an effect, issues can be picked up quickly and remedies found if possible.

Mary Scanlon: Taking evidence has been an extremely useful exercise and I hope that we will be able to discuss planning guidelines in future. As we have taken evidence, it has become clear that some of the naming and shaming by communities has led to better practice and better consideration of community interests. For example, CoalPro acknowledged that its consultation had not been as good as it should have been. That has been positive.

The main problem is the presumption against development. I cannot understand why better policing and penalties cannot bring about the desired outcome. The Conservative party is undoubtedly in favour of opencast mining, but we are also very much in favour of a positive and appropriate balance between local communities and the industry. Our evidence taking has helped in that respect.

The level playing field with England and Wales about which the minister constantly talks brings me back to the 90 per cent cut in jobs and output. However, I listened carefully to what the minister said and I do not believe that we have heard any empirical evidence that the presumption against development would lead to such a decline in the industry in Scotland; we have had no proof that the reduction in opencast mining in England is a direct result of the presumption against development. I was hoping that that would be made clear in the evidence, but I am not sure that it has.

The witnesses from Douglas community council made a good point about the responsibility that they have as volunteers to deal with hundreds of pages of environmental impact assessments and technical guidelines. I think that they spoke about having to deal with piles of paper 4in thick. We should examine that, as it is an example of the planning process not being equitable and balanced.

As David Mundell mentioned, Friends of the Earth has said that the new guidelines are well thought out. I would like to think that our evidence taking has made a positive contribution towards a better understanding between the industry and the communities. I hope that it will help communities to have more of a voice in future.

Scott Barrie: Like Mary Scanlon, I think that the evidence taking has been a useful exercise, as it has brought clarity. As evidence was led last week and again this morning, those who perhaps thought themselves to be on opposite sides of the argument have found a lot of agreement about the issues and the best way forward.

Mary Scanlon mentioned the evidence that we took on the difficulties that local communities have when combating planning applications. For a host of planning applications, not only for opencast, it sometimes feels like a David and Goliath situation. We have constantly said that we will deal with that issue when we come to consider changes to the planning regime.

It was useful that the minister was able to make it clear that the change to a presumption against development, as opposed to a presumption in favour of it, is policy neutral and not the big change that some have portrayed it as being. It was useful that it was not only stated, but constantly emphasised, that it will be neither any easier nor more difficult to gain planning permission than it is at the moment. That is an important point to hold on to because, like a number of members, I represent a constituency in which a fair degree of people are employed in the opencast mining industry—never mind my commitment to coal-fired electricity generation—so I would not want the industry to be decimated.

Although we do not have the facts on what has caused the decimation of the English opencast industry, the fact remains that the industry south of the border has been decimated for whatever reason. Therefore, we should tread carefully with changes. In any contribution that we make to the Executive on the evidence that we have taken, we should reflect the different opinions and views that were expressed. In that way, the committee will serve everyone well.

Cathie Craigie: The evidence that we have taken shows that there is a need to involve communities and ensure that they feel that they have a say in the planning issues that affect their towns and villages. In her evidence to the committee, Ann Coleman from Greengairs said that, although she accepts that her community is surrounded by coal, that does not mean that the community's environment and quality of life should be adversely affected by the actions of rogue coal extractors.

Like colleagues, I have concerns about the presumption against. The minister gave assurances this morning on the way in which the Executive hopes that phrase will be interpreted by local authorities in considering applications. It would be better to encourage applicants to provide solid and substantial evidence that at least one of the two tests has been met before they are allowed to proceed with a full application.

The Scottish Executive must encourage local authorities to develop plans that address the needs of their communities. Paragraph 9 of draft SPP 16 states that the Scottish Executive expects

"planning authorities to work closely with communities in coalfield areas when considering the contents of development plans".

That suggests that the Executive is holding up what has happened in East Ayrshire as an example of good practice, if not best practice, and that it wants local authorities that have coal in their areas to follow that example. However, we should not forget St Ninians. I do not know whether Fife Council has such a robust plan, although it appears from the evidence that it has been able to develop proposals that meet the needs of communities.

On separation distances, I was reassured by the minister's interpretation that a certain amount of flexibility will be allowed for, so that local communities can develop plans that meet their needs. However, we must empower local authorities through the guidance to take action against operators that do not comply with existing planning conditions. We should send out the message that "cowboy operators", as Nicky Wilson called them last week, should be outlawed and that there is no place in the industry for people who will not comply with conditions and work with local communities.

11:45

Mr Home Robertson: Having represented a coalfield constituency when there was a presumption in favour of opencasting, I emphasise strongly that that presumption was a serious mistake and a very bad principle. As has emerged during the committee's deliberations, the opencast industry can have a future, provided that lessons have been learned. However, I still think that the Executive got it right in 1999 with the introduction of a presumption against opencast developments. The presumption in favour was wrong and made it far too easy for opencast operators to put local communities under siege by coming back again and again with fresh applications. There were too many examples of bad practice.

I repeat that the industry can have a future, provided that lessons have been learned, but I hope that the Executive will stick to the presumption against developments, which would enable good proposals to be implemented. If it is demonstrated that a proposal would be beneficial to the local community, that it has support from the local community and that it would be good for the local and national economy, fair enough, it should go ahead. The Executive has the matter right with a presumption against developments and I hope that the policy stays that way.

Donald Gorrie: We must learn from East Ayrshire Council and the St Ninians project. There should be more use of neutral experts, who can in the first place support communities that have a great problem with dealing with planning applications. The employment of outside experts should be funded by developers. At St Ninians, the mining is monitored by a neutral expert, who has the power to close down operations until something is put right. Neutral experts who are paid for by the developer but employed by the council would be helpful.

We certainly do not want a presumption in favour of opencast developments. If people feel that a presumption against could cause councils not to give proposals fair consideration, the minister should consider stating that there is neither a presumption in favour nor one against, but that proposals start with a blank sheet, although developers must fulfil certain conditions. Whatever the minister says, the point that the presumption against developments equals a death knell for opencast coal mining has obviously seized some people. East Ayrshire Council and St Ninians have shown that developments can be acceptable and we must build on that experience.

The Convener: The process of taking evidence on the matter has been helpful. There has been considerable debate and contention around the issue and the evidence taking has allowed the committee to consider the Executive's proposals.

Like other members, I think that the Executive's proposal to introduce a presumption against opencast developments, while being policy neutral, is absolutely right, because it offers communities the reassurance that they need that they will be on a level playing field with developers. The signal that communities and developers have equal rights in planning matters is vital.

We have flagged up several important issues about enforcement and monitoring of the operation of opencast sites. I hope that the Executive will examine those issues carefully—both in relation to opencast developments and the wider planning agenda—as it considers the forthcoming planning bill. Most important, I hope that the Executive will monitor and assess the impact of SPP 16, in the short and longer terms and from the community and developer perspectives.

I thank the members who visited the committee today for their attendance.

11:49

Meeting suspended until 11:52 and thereafter continued in private until 12:04.

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