COMMUNITIES COMMITTEE

Wednesday 14 September 2005

Session 2

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COMMUNITIES COMMITTEE
21st 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)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Tricia Marwick (Mid Scotland and Fife) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Tim Barraclough (Scottish Executive Development Department)
Malcolm Chisholm (Minister for Communities)
Neil Ferguson (Communities Scotland)
John McNairney (Scottish Executive Development Department)
David Rogers (Scottish Executive Development Department)
Archie Stoddart (Scottish Executive Development Department)
Michaela Sullivan (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Wednesday 14 September 2005

[THE CONVENER *opened the meeting at 10:19*]

Housing (Scotland) Bill

The Convener (Karen Whitefield): I open the 21st meeting in 2005 of the Communities Committee. I remind all those present that mobile phones should be turned off.

We have apologies from Donald Gorrie and Linda Fabiani. I understand that Linda Fabiani is going to be the new convener of the European and External Relations Committee. On behalf of this committee, I record our thanks to her for her participation in and contribution to the work of the committee in the past year. We wish her well in her new position as a committee convener.

I welcome Tricia Marwick MSP, who has joined us for this morning's meeting.

Item 1 concerns the Housing (Scotland) Bill. The committee will consider a briefing from Scottish Executive officials on part 3 of the bill, which is on the provision of information on the sale of a house. We are joined by David Rogers, head of the private sector and affordable housing policy division, Archie Stoddart of the Housing (Scotland) Bill team and Neil Ferguson of the single survey team at Communities Scotland.

I thank David Rogers for his very detailed and comprehensive response to the stage 1 report on the Housing (Scotland) Bill. We have a number of questions for the witnesses. I ask Mary Scanlon to start us off.

Mary Scanlon (Highlands and Islands) (Con): What lessons have been learned or information gleaned from the Arneil Johnston report? I refer you to section 2.2 of your briefing paper, on the evaluation of the single survey, where you state:

"the Single Survey has a positive influence on the house buying process".

Nowhere in the Arneil Johnston evaluation could I find it stated that the single survey has a positive influence on the house-buying process. I will not go through all the points in the evaluation, but I mention a reference to surveyors, who felt that the single survey

"will not have a positive impact on improving the condition and energy efficiency of private sector housing".

That is the main reason for having the single survey. I wonder where you got the idea that the single survey would have a positive influence.

David Rogers (Scottish Executive Development Department): I will leave Neil Ferguson to answer that question.

Neil Ferguson (Communities Scotland): The conclusions reached in that report were the conclusions of the researchers. The research has not been commented on specifically by either the purchasers information advisory group or the Executive.

Mary Scanlon: Which researchers?

Neil Ferguson: Those employed by Arneil Johnston.

Mary Scanlon: If that was their conclusion, why is it not in the report?

Neil Ferguson: It certainly was. I am not sure that I can find it right now, but I will look for it.

Mary Scanlon: I certainly did not find it.

How are you engaging with the key stakeholders on further developing proposals for the single survey? The single survey pilot steering group was not notified that the single survey was to be compulsory prior to the ministerial announcement, but in meetings since that announcement, did the key stakeholders agree with the position that the minister and the Executive have taken on having a mandatory single survey?

David Rogers: There was engagement over the summer when we had three further meetings of our purchasers information advisory group to clarify its remit and to consider the purchasers information pack, the evaluation of the single survey pilot and the development of a mandatory single survey scheme.

You would have to ask each of the stakeholder organisations for their current position on whether the single survey should be mandatory. We cannot put words into their mouths, but we can say that all the stakeholders in the single survey pilot are working closely with us to design a system that works well.

Mary Scanlon: Given the Arneil Johnston report, which is highly critical and damning, have you made any changes to the single survey or to your approach?

David Rogers: We do not accept that the report is damning. We acknowledge that the single survey pilot produced only a small sample of surveys on which to base information and that the researchers obtained an even smaller number of surveys that gave rise to information on the reactions of buyers and sellers. We fully acknowledge that we cannot place too much weight on the pilot. However, I would not characterise the report as being highly critical. The researchers did a good job of getting qualitative rather than quantitative information from

discussions with people who took part. They drew conclusions about the effect of the survey on the house buying and selling process that we will take into account, but we do not expect to make any radical change to the overall approach in the light of the single survey pilot.

Mary Scanlon: I agree that the research was excellent. In fact, it is an accurate reflection of many stakeholders' serious concerns about the single survey. I would not like you to think that my view on the contents applies to people's abilities, because the research is excellent.

I will move on to the other points that I discussed prior to the meeting. Section 3.4.18 of the briefing paper, which is about potential buyers having access to a surveyor's report, states:

"there should be a clear understanding that follow-up queries would not be possible in connection with the Single Survey, except where there are glaring issues of clarity that require to be addressed for all … parties."

If I were a potential buyer with some queries about the survey and I wanted to phone up a surveyor, what would count as a glaring issue of clarity? All potential buyers could seek information on what they consider is a glaring issue of clarity. Could potential buyers have a discussion with the surveyor who carried out the single survey on behalf of the seller?

David Rogers: We were quoting the housing improvement task force, which went into the issue in great detail and concluded that it would be difficult to have a fair system if potential purchasers could ask for detailed interpretation of points in the survey and that information was provided to them but was not shared with other purchasers. In light of the potential difficulties, the housing improvement task force concluded that that would not be possible in the system.

Indeed, in the single survey pilot the Royal Institution of Chartered Surveyors advised its members that they should not provide further interpretation beyond the survey. The survey is meant to stand on its own. It is a piece of evidence that people can take into account. Having said that, the pilot evaluation tells us that some surveyors were ready to answer questions from purchasers.

We will examine that issue further in the design of the survey for the mandatory scheme. However, at the moment we do not have a ready solution to the issue of fairness and one purchaser getting more comprehensive information than another. Neil Ferguson will perhaps comment on the point about what is a glaring issue of clarity.

10:30

Neil Ferguson: During the pilot, sellers were given a copy of the report and were able to correct errors of fact within it. If the report said that there were three bedrooms when there were only two, that was corrected; it was not the case that what was stated in the report was the end of the matter—such matters could be corrected to provide clarity. However, when the report was produced and issued in its final form, it stood as the report. There is limited evidence, but I understand that during the pilot there were not many queries of surveyors from prospective purchasers.

Mary Scanlon: On the level of detail in the single survey and categories 1, 2 and 3 for repairs, if someone wants to purchase a property, it is important that they know what the repair and maintenance schedule is likely to be. If potential purchasers are not given full information and are not able to discuss points with a surveyor, is it not more likely, given the cost of houses in Scotland, that they will pay for a survey of their own? The single survey might not be sufficient for a buyer and might not address the problem of multiple surveys, as purchasers will want a survey to be done by a surveyor with whom they can discuss all the issues.

I will make one final point, as I know that my colleagues are keen to get in. I am concerned—as many potential purchasers may be—about the new breed of inspectors who will carry out surveys. Are we really saying that an inspector with a level 4 Scottish vocational qualification can do the work of a surveyor? Surveyors require a four-year degree. They might be concerned that the work that provides the mainstay of their profession's income will be done by inspectors with an SVQ level 4.

David Rogers: There are two questions there.

Mary Scanlon: Yes. That is intentional.

David Rogers: I will deal with the first one. When the mandatory single survey comes in we will move from a situation in which most buyers rely on a valuation report alone to one in which they all receive the equivalent of a home buyer survey under the current scheme. Buyers will get far more information than most do now.

There is no escaping the fact that there is an issue about purchasers' ability to ask for further clarification. We will pursue that point further during the design of the scheme, but we will move from a situation in which patently most buyers do not get sufficient information to one in which they will get far more information. The point that you raise might be, in effect, a wart on the new system that we will have to tolerate. That is the view of the housing improvement task force. We will re-examine the issue as we design the scheme, but it is not a problem that can easily be solved. That blemish or imperfection in the new scheme does

not mean that it is totally flawed; it is certainly better than the current situation.

On who can provide the survey, the crucial point that we make in the briefing paper is that consumers should have confidence in the quality of the survey. The main source of such confidence is the professional standards, training, education and so on of the RICS chartered valuation surveyor. It might be in consumers' interests for the market to be open to others, but if that were to happen, we would want to be confident that consumers could have equal confidence in the quality of the product on offer. The product is not only the survey, but the professional standards and so on that underpin it.

Mary Scanlon: On a general point, you have responded to our stage 1 committee report on the Housing (Scotland) Bill, but not to the Arneil Johnston evaluation of the single survey project. The conclusion of that report says:

"The Single Survey product should be amended to incorporate the improvements identified."

Let us be honest: the evaluation is critical. What are you doing to incorporate the report's recommendations and the improvements that Arneil Johnston has identified?

David Rogers: I will let Neil Ferguson answer that question in a moment. I have to say that we do not accept that the report is critical.

Mary Scanlon: Oh, come on—

David Rogers: Behind the point about positive influence that you raised lies the report's conclusion that

"In general the Single Survey was viewed as a good product providing useful information for potential purchasers. Purchasers indicated that the report format was well presented, easy to follow and easy to understand."

I take issue with the assertion that the report is highly critical of the proposal.

Mary Scanlon: We will have to agree to differ on that point.

The Convener: I remind members that as we are questioning Scottish Executive officials we should restrict our questions to policy matters. We cannot stray into the politics of the issue; the minister is accountable in that respect.

I believe that Christine Grahame has specific questions on the pilot steering group.

Christine Grahame (South of Scotland) (SNP): I have a couple of supplementaries on the single survey report. First, I should say that I associate myself with Mary Scanlon's comments on the Arneil Johnston report. It was my understanding—

The Convener: Ms Grahame, this is not about people making speeches or putting their views on the record but about putting questions to Executive officials. If you have no questions on the pilot steering group, I ask Cathie Craigie to begin her line of questioning.

Christine Grahame: No, I think that I will move on to—

The Convener: In that case, Mrs Craigie will first ask questions on the single survey report.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The briefing paper attached to David Rogers's letter dated 8 September says that

"The Executive expects the Single Survey report to contain information on the condition of the property, energy performance"

and "accessibility", and refers to the fact that the HITF recommended that the survey should include a valuation. However, I notice that you use the word "expects". How confident are you that all those elements will be included?

David Rogers: We used the word "expects" because we did not want to pre-empt the outcome of our consultation process with stakeholders on the final scheme's design. In the light of those discussions, we feel that the survey report should include a valuation and information on a property's condition, energy efficiency and accessibility. I suppose that our expectation in that respect is very strong.

The detail of the property condition information needs to be re-examined, but our working assumption—which is based on quite a strong expectation—is that the single survey pilot will provide the model for the final scheme. However, we need to look at the level of detail here and there and think about whether we need to be specific about a format for a single survey report or whether we can provide a specification of what it should include. We have not yet reached a conclusion on that matter.

I ask Neil Ferguson to tell the committee how the Arneil Johnston report will influence any adjustments.

Neil Ferguson: The Arneil Johnston report recommended one or two minor amendments to the structure, or at least the content, of the purchasers report, which is what we expected would happen.

On the product itself—developed along with the RICS—the Arneil Johnston report was reasonably positive. It indicated that the inclusion of a valuation in the single survey performs three positive and distinct functions. It stated:

"The level of information provided on property condition within the Survey did appear to influence the conduct of both sellers and purchasers in the transaction process."

Where a survey highlighted specific problems, some sellers chose to have further investigations carried out, which is the response from the market that we were hoping to get. It said:

"The inclusion of an energy efficiency report was found to be useful".

Finally, on the accessibility information, the research found that, with such a small sample, the pilot had provided very little information. Therefore, the four main elements of the survey report in the pilot were generally found to be useful, although the evidence base was limited.

Our working assumption is that the final survey report will be broadly similar to the one that we have at the moment. However, we will have to work with stakeholders to refine the process to take account of any of the points made in the research.

Cathie Craigie: From the evidence that the committee took and the committee's report, you will know that concerns were raised about the shelf-life of the valuation. Page 14 of the Executive's briefing paper takes us through how the HITF arrived at its decision in favour of the first option that it considered—a single survey with a valuation, which it preferred because of its simplicity.

The evidence that we gathered suggested that not everyone thinks that such a valuation will be simple and that there could be problems as time goes by and if anything happens before the house is sold. Do the Executive officials still recommend that process as being the simplest?

David Rogers: Yes. Along with the purchasers information advisory group, we re-examined the inclusion of a valuation and the shelf-life of the rest of the survey. Our conclusion is shown in our paper and reflects the consensus among the members of the advisory group about what would be needed to make the system work. We agreed that there should be no specific shelf-life for any of the information; that the information would be required to be of recent vintage; and that the valuation should be less than three months old, which would give people a chance to put right any glaringly obvious repairs before they sell the house.

The survey will be a snapshot of the property and it will be for potential purchasers and their advisers to interpret that. Obviously the information will date as time goes on, but we and the advisory group could not see a reason to specify a particular shelf-life for any of the information, because the different information will date at different rates and that might also be true of the valuation.

It still seems to us that the simplest way is to include a valuation as part of the survey report that is provided to the seller rather than to have some complicated system that enables potential purchasers to obtain a valuation from the same surveyor, although the market might develop that as an add-on to the product. We take the view that there should be no specific shelf-life. The proposal will still provide for more information than most people get at the moment. There will be issues around timing, but those will be for the market to resolve.

10:45

Cathie Craigie: Will you say a bit more about the mechanisms that will be in place to update the information? How would damage to a property by freak weather be dealt with?

Neil Ferguson: In essence, it would be dealt with in the same manner as it is dealt with now. At present, there is a period between the survey being carried out and the purchaser moving into the property. Anything could happen to the property in between—there could be a storm or the levees could break—but the survey would remain as it was. Surveyors would probably tell you that the existing shelf-life of surveys is simply the date of inspection. A surveyor cannot be held liable for something that happens following the inspection. Exactly the same infrastructure around the survey would be in place; the position would be no different.

Cathie Craigie: An energy efficiency report is also to be included in the survey. How would a seller go about getting that done? I agree that it would be helpful, but are there enough qualified people out there for that to be achieved?

Neil Ferguson: In the pilot, surveyors were trained specifically to carry out energy efficiency inspections as part of the single survey inspection. As a result of a European Union directive, there will be a requirement on sellers of properties to get an energy efficiency report. The work on that in relation to all types of property is being done by the Scottish Building Standards Agency, with which we have been working to arrange for the single survey to be the delivery mechanism for sellers of marketed properties. The intention is that rather than have someone else come to inspect the property for the energy efficiency report, the surveyor will be able to do that as part of the inspection for the single survey. During the pilot, such data were gathered and put on a website that generated an energy efficiency report, which was in turn embedded in the single survey report. As far as the seller was concerned, there was one inspection and one report, of which the energy efficiency report was part. We will have to ensure that all surveyors are appropriately trained and qualified, but we do not expect that to be a problem.

Cathie Craigie: I move on to hidden defects insurance. I am sure that you are aware of the evidence that the committee took before it compiled its stage 1 report, and there seemed to be general support out there for hidden defects insurance. I know of constituents who have felt let down by surveyors when they have found defects in properties weeks after moving in, so I can see the attraction of the insurance and the protection that it would give purchasers. The Executive has said that, given the additional costs involved and the limited availability of the insurance, it proposes not to stipulate that hidden defects insurance must be provided, but instead to leave it to the market. Is it good enough to leave it there? Should we not stipulate that hidden defects insurance should be introduced?

Neil Ferguson: A number of issues lead us to conclude that we are not in a position to stipulate that. First, the housing improvement task force had concerns about the potential additional cost of the survey fee. The RICS is working with its colleagues in London to try to work out what the additional fee might be. Although the analysis is not complete, early indications suggest that the extra cost for hidden defects insurance alone might be £100 per survey, which is a fairly hefty proportion of the overall fee. Balancing the cost of hidden defects insurance with its usefulness and the number of times that it would be drawn upon is a factor.

Another complicating factor, which might be resolved in the fullness of time, is the fact that the Financial Services Authority has had since January 2005 a responsibility to regulate general insurance activities, so a firm may not undertake an activity that the FSA regulates unless the FSA authorises it to do so. Most—if not all—surveying firms are not registered with or regulated by the authority. The RICS is looking into the process that will have to be followed and into whether the RICS could have designated status with the FSA, which would enable its firms to provide that insurance.

At present, we know of only one insurance company that offers to underwrite hidden defects insurance, so a market does not exist. For that reason, we are a bit reluctant to stipulate that every survey must carry the insurance. Providing the insurance involves cost and complications. In the fullness of time, a market may develop as demand is created and a track record is established. Premiums might reduce once insurance companies are more comfortable with the level of risk that they would be taking on, but that is speculation. At this stage, for all the reasons that I have given, we are not in a position to stipulate that every survey should carry such insurance. We hope that that will be the case and we are attracted to the idea, but we cannot make that stipulation.

Cathie Craigie: So, from the information that you have and the research that you have conducted, you are not in a position to say that if the market was left to its own devices, the practice would become widespread.

Neil Ferguson: We cannot give that guarantee. We hope that hidden defects insurance will be adopted, which will put us in a better position to encourage surveyors to provide it and buyers and sellers to seek it out when they consider getting hold of a survey. However, we cannot give a guarantee at this stage. As we find out more information, from surveyors in particular, developments might occur, but we are not in that position yet.

Cathie Craigie: Section 104 of the Scotland Act 1998 requires the Executive and the United Kingdom Government to reach agreement on the legal liability that will arise from the single seller survey. Are you confident that that agreement can be reached by the time the scheme is introduced?

David Rogers: The UK Government has already agreed in principle to make the necessary provision, which would be consequential on the Scottish provisions. An order under section 104 of the 1998 act would make provision on reserved matters in consequence of Scottish legislation on devolved matters. The agreement is in principle, but the UK Government will have to examine the fine detail—that is why I give the qualification "in principle". However, we are confident that agreement will be reached. The order would reflect the position that has been put in place for the equivalent English system, so we have no reason to believe that the UK Government would go back on that.

As for timing, I would expect the section 104 order to be consequential on the regulations that are made under the bill, rather than on the bill itself. We aim to develop the two sets of regulations in parallel so that they integrate appropriately.

Cathie Craigie: In the paperwork that you supplied, you reminded us that the Executive is considering whether a central register of surveys—similar to that proposed in England and Wales—will be needed. A view on that has not been reached. Would a register work? Have there been any other thoughts about whether we should include one?

David Rogers: We discussed that issue at some length with the stakeholder advisory group. It is fair to say that there is a spectrum of opinion on whether such a system is necessary. The proposals to introduce it in England would, in effect, set up a new profession to undertake home

inspections. Such a register would facilitate quality-control checking. Another potential issue is of sellers shopping around for a survey that suits them. Those are the main drivers behind the English proposal.

In Scotland, we have a rather different situation. We are not necessarily seeking to extend the range of people who can provide surveys beyond those who already do—chartered valuation surveyors. What drives our consideration on the necessity of a database is whether it is necessary as part of the quality-control monitoring system for the surveys. We are not at present convinced that it would be necessary, particularly if we rely on the existing profession and its mechanisms for quality control and training.

Cathie Craigie: Have you any idea how much it would cost to maintain such a system?

David Rogers: We cannot speculate. We know that in England the cost ran into several million pounds. Perhaps my colleagues have figures.

Neil Ferguson: The initial proposal was for several million pounds, but the Office of the Deputy Prime Minister was looking at different ways of delivering the system. At the moment, we do not even have a firm estimate for what is being considered down south, as the proposal has changed. We cannot say what the figure for Scotland might be.

Cathie Craigie: Who would pay?

David Rogers: At the moment, the proposal is that the UK Government will look to the industry to come up with solutions. Those solutions would be registration schemes for home inspectors. One of the registration certification schemes should own a database on which all the home inspection reports would be registered. The system in England looks to be quite bureaucratic, but it is driven by the industry and the cost would be for the industry to bear.

The pilot model in Scotland would be rather simpler and based on the current system of scheme 2 surveys; we could introduce a relatively simple system in Scotland without setting up a complicated apparatus to support it. We need to consider the issue further, particularly the possibility of expanding the range of people who can provide a survey. If home inspectors on the English model were to be allowed to provide surveys in Scotland, we would want to be assured that consumers could have confidence in their product. Registration and monitoring systems might need to be part of that. If such a system were to be introduced, it would be up to the industry to provide it.

Christine Grahame: I have a few supplementary questions. My first is about the shelf-life of a survey. Imagine that I am a seller and that I had my single seller survey done in March 2005 ready to put my property on the market. Two months later, a prospective purchaser is beginning to nibble, but by then we are probably into the time when prices go up. We are getting into the summer, when the market is much better than it is in March. You said something about an add-on to the single seller survey—a review or a refresh. How would that operate? As a seller, I am not happy that two months have passed and that I am stuck with the valuation, notwithstanding the condition of my property at that time.

11:00

David Rogers: All that the bill requires is that you have a survey and a valuation done and that you provide them to potential purchasers. I would expect the valuation and survey to influence your decision on the asking price and the upset price and to inform decisions by the potential purchasers. Both parties will be aware of movements in the market.

Christine Grahame: Why put a valuation on the property when the market will decide two months later? The Arneil Johnston report states:

"agents appeared to believe that purchasers were most interested in the valuation provided".

The valuation is at the heart of the matter. There is much that is good about the single seller survey, but I have some issues with the valuation. Will it prevent people from having another survey done for their building society or bank to refresh the valuation?

Neil Ferguson: The valuation was deemed to be necessary by virtually everybody around the advisory group table for reasons that relate to two of the objectives of the single survey. The first objective is to address the issue of multiple valuations. If we left it to all the potential purchasers to get their own valuations during the marketing process, we would still have multiple valuations. The objective is met by the production at the outset of one valuation on which everyone can rely.

The second objective is to avoid the setting of artificially low upset prices. The limited evidence from the pilot shows that sellers provided asking prices that were very close to the valuation, so the system seemed to be working. If the single survey did not include a valuation, the seller would not have the valuation as a guide when they set the asking price.

Christine Grahame: I hear what you say. Purchasers will have the valuation and I am sure that they will look carefully at the structural report and the condition of the property, but I am asking

you about the position two months down the line. Are you telling me that people who have to borrow from a building society are not going to rely on the valuation that was given two months earlier, perhaps at a time when the market was not as lively? They will require a valuation for the purposes of the lender to see how much money they can borrow, otherwise they will be borrowing on the basis of the first valuation.

Neil Ferguson: The short answer is no. It will be the lender's decision. The lender will reserve the right to decide whether the valuation is acceptable, but that is the case at present. I arranged to buy a house in November and the survey was done in that month but I did not receive the mortgage funding and move into the property until March. The issue may not be a big one. Lenders will generally accept the valuation.

Christine Grahame: I will leave that one. The proof of the pudding will be in the eating. I also have a question on the register of surveys. What information will be included in the register? Is it the report and the valuation, putatively?

David Rogers: Yes.

Christine Grahame: I think that I read somewhere that the idea has been floated that people will have access to the register only if they put in a note of interest on a property. The information will not be widely available; one has to put in a note of interest.

Neil Ferguson: Generally, it will be left to the selling agents to decide on the distribution of the report. Some sellers might want to make it freely available. It might end up on websites alongside the particulars, for example.

Christine Grahame: I see; I have misunderstood the situation. I thought that the register of surveys would be a national—

Neil Ferguson: Are you talking about the register itself? I thought that you were talking about the availability of the single survey. Could you repeat the question?

Christine Grahame: I am asking how the register would work. Given that the Government will have set up a register of single surveys, if I am a seller who has had a single survey and a valuation done, do I take it that the information on my property—that is, the scheme 2 survey and valuation—will be available to members of the public? To whom will it be available?

David Rogers: To be clear, at the moment we are saying that it does not appear necessary to have a register. Were there to be one, its purpose would be to enable us to carry out quality-control checking of the survey and to allow us to ensure that people had carried out the survey. As is the plan in England, in cases in which there had been more than one survey of the property, the register could perhaps be used to make that fact known to people who are involved in the transaction. However, you are asking us to explain a policy development that has been carried out south of the border. We are not at present trying to make the case for that policy. I particularly stress the fact that we would have to go into the issue of confidentiality in great detail.

Christine Grahame: That was the point that I had in mind. I read, somewhere, that the information could be available to anyone who registered a note of interest. Anyone could do that—a neighbour or a developer, for example. I noted that and was a bit unhappy about it.

On the issue of hidden defects and the role of the surveyor, what would the costs be of the associated insurance policy? I am thinking about the cost to the seller, who will bear the cost of the insurance that the surveyor has to take on.

David Rogers: All that we know is that the housing improvement task force found that one firm was offering a self-insured hidden defects guarantee at, effectively, no cost, or at least no transparent cost. The quotation that was obtained by the task force was that the cost would be around £100 a survey for hidden defects. That reflected the position of the market at the time. The fact that the cost is of that scale is a good reason not to make such a policy mandatory.

Christine Grahame: So the figure of £400 was being bandied about as a guesstimate of the single seller survey and the hidden defects guarantee would bump that figure up by another £100.

David Rogers: On those estimates, yes.

The Convener: As time is marching on and we have the minister waiting outside, I ask members to keep their questions short and our guests to make their answers as concise as possible.

Tricia Marwick (Mid Scotland and Fife) (SNP): I will do my best, convener.

I want to deal with the issue of the transparency of commercial relationships. Section 3.4.13 of the paper says:

> "It is possible therefore that an estate agent acting on behalf of a selling client might commission a Single Survey to an 'in-house' surveyor."

The paper goes on to say that the Executive recognises that that might happen but is not particularly concerned about it. I have to say that I am concerned about the fact that the single survey could be done by the in-house surveyor of an estate agent that is the seller as well as the agent responsible for selling. Given that estate agents are the only unregulated profession, I wonder

whether you have considered that position carefully. Can we ensure that such a relationship is not possible rather than just leaving it to chance that it might be okay?

David Rogers: We are providing assurance to potential purchasers about the quality of the survey by putting them in a similar contractual position to the one that they would have been in if they had purchased the survey themselves. We will bolster that using section 104 of the Scotland Act 1998. Against that background, we are not in a position to regulate estate agents, because that is a reserved matter. However, there must be a degree of transparency in such relationships and the contractual responsibilities of the surveyor have to be clear. That ought to be the basis for instilling confidence in the product in consumers. Neil, do you have anything to add?

Neil Ferguson: Very little, other than to say that such relationships probably exist at the moment anyway and I do not think that we would be able to change them.

Archie Stoddart (Scottish Executive Development Department): In relation to estate agents, section 114 of the bill requires a local authority to notify the Office of Fair Trading where there has been a breach of duties. That feeds into the wider duties that local authorities have in relation to estate agents. The situation is therefore not quite as open and unregulated as it might appear.

Tricia Marwick: You acknowledged that the regulation of estate agents would not be within the powers of the Parliament. However, given that, the fact that there will be a new duty in terms of single surveys and the fact that such relationships might have operated for a long time, do we not need to be explicit about the relationship between surveyors and estate agents to protect consumers? Should we not look to preclude such relationships? Would that not ensure that there is the confidence in the system that we are all looking for and which you recognise but do not seem to be willing to do anything about?

David Rogers: The short answer is that we are not in a position to go that far. We are putting in place other mechanisms to ensure that there is consumer confidence. There are commercial relationships, but that is the nature of the market. We are reluctant to intervene in the market's ability to provide solutions to people who are buying surveys. For example, there are attractions in the complete package being available through an estate agent, because there may be financial benefits, so we are reluctant to intervene unnecessarily in such relationships.

Christine Grahame: Your paper states:

"The Executive is working to develop proposals for a PIP that can introduce more certainty into the house-buying process".

That is to be applauded. You go on to state that while you wish to provide purchasers with useful information, you do not want to make the exercise cumbersome or to introduce unnecessary expense. You then refer to information being

"derived from a pre-sale questionnaire."

Could you develop that point?

David Rogers: That reflects discussions in the advisory group. We set up a sub-group involving the Law Society of Scotland, the Scottish Consumer Council, ourselves, Neil Ferguson and the National Association of Estate Agents to re-examine the housing improvement task force's recommendation that there would be benefits in bringing forward to the start of the conveyancing process the compilation of warranties, planning permission, evidence of title and so on that normally occurs at the end of the process and which can cause problems.

The group has taken into account the research that DTZ Pieda did for us last year, which told us that most purchasers would be interested in summary information rather than in a great thick pack of documents. It is looking for a system that can provide more certainty, so that transactions do not go awry at a late stage of the process, but which will not incur unnecessary cost. The proposal that is being discussed—the one that the group has come up with—is that there should be a form of pre-sale questionnaire in which the seller and their agent would flag up issues such as the availability of planning permission and evidence about burdens on the property, which might trip up the transaction later.

11:15

Christine Grahame: I can see a problem with that, though. The acting solicitor would have to have the title deeds to complete the questionnaire veritas, so there would be costs involved. All the costs of the purchasers information pack would be levied on the seller if the solicitor's time and the ordering of documents were required. It does not seem to me that you are solving the problem. To complete the questionnaire, the solicitor would have to have the information in front of them.

Neil Ferguson: The Law Society's proposal is slightly different. Instead of the questionnaire being completed by the selling solicitor, it would be completed at an early stage by the seller, who may have lived in the property for many years and would know the answers to many of the questions about burdens, structural alterations and that kind of thing. The Law Society's proposal is that the seller should complete the questionnaire.

Christine Grahame: How far down the road are you with that proposal? It sounds to be fraught with difficulties. For a start, a lot of people will not know what is meant by the word "burden". They may have been in the house for only five years and may not be aware of the fact that long-since-forgotten structural alterations were done by someone else. The proposal is fraught with difficulties and would make for very complicated missives.

David Rogers: The advisory group has considered an initial paper on the matter from the sub-group, which involved the organisations that I mentioned. A number of issues have been raised, including some of the sort that you have just mentioned. The advisory group has been sent away to work up the proposal further. The proposal is not established policy yet, but there is a view around the advisory group that it seems to have the makings of a solution, because it would effectively provide information that would speed up the process. Nonetheless, the detail needs to be worked through and the proposal has to pass the test of not introducing significant extra cost but providing the reassurance that is necessary.

Christine Grahame: I accept that. I do not know what position the committee will take on this point, but we do not want to pass a bill that does not work in practical terms. Is there a timescale for resolving those practical issues that will determine whether the idea floats or sinks?

David Rogers: The committee would not be passing a bill that went into such detail. The bill is a power for regulation—

Christine Grahame: But it is in the detail that the enactment will take place.

David Rogers: I accept that it is the policy that underlies the bill. The next meeting of the advisory group will be in October, when we will consider a further proposal. The aim is to resolve the matter in time for the regulations. However, I do not think that we can expect the detail of the proposal to be worked out in time for the passing of the bill.

Christine Grahame: Oh dear. That is interesting.

At what point will the seller provide the information pack to the purchaser? I think that that has now been established, but I would like clarification.

David Rogers: As it stands, the regulations can make provision for that, but the seller or their agent would have to possess the information at the time that the house was marketed. We are considering drafting an amendment to provide more flexibility, so that it may not be necessary for the seller to have the information on the day that the property is marketed. That applies to the purchasers information pack, but different considerations apply to the single survey, for which we would want the seller to have had the survey and considered it before going to market.

Christine Grahame: So you are separating out the two things.

David Rogers: I think that different considerations apply to them.

Christine Grahame: I presume that the bill will be amended to reflect that.

David Rogers: If we felt that such flexibility was necessary, we would lodge an amendment to allow it.

Christine Grahame: Cost is a big issue for people, particularly those who are on low incomes. It seems to me that there are many ifs and buts in your paper about what the information pack will contain, whether it will be a questionnaire, how much it will cost to assemble the pack and whether a seller or their lawyer will do that. How can we get an idea of what the cost of the pack will be for the seller of an average house, rather than of a posh castle, in terms of their outlays at the beginning of the process?

Neil Ferguson: The advisory group expects the pre-sale questionnaire proposal to be cost neutral, because solicitor time would be saved at the end as a result of the process being simplified, albeit there may be a small outlay at the beginning. Therefore, the process will be cost neutral, or will even save money, rather than add expenditure to the process of buying and selling. That is what we expect at this stage, but we will need to work up the proposal in further detail.

Christine Grahame: People on low incomes may have no money to pay for anything, even the single seller survey. How is the development of a loan system coming on?

David Rogers: First, I will complete Neil Ferguson's point. For both the single survey and the purchasers information pack there will be a full regulatory impact assessment, with costings of a detailed proposal, when we produce the proposed regulations. The committee will be able to consider that matter then.

You asked about support for low-income sellers. I suppose that we could narrow that down to any seller who cannot get an affordable product from the market. We propose that the scheme of assistance provisions in part 2 of the bill should be amended to provide the flexibility for local authorities to assist people who are selling their houses. When we introduce the regulations, we will consider—as will the committee, obviously—whether there is a need for such support to be available.

Following discussion with our advisory group, we envisage that, in many circumstances, the market should be able to find ways of providing affordable products to most people. Many sellers will have equity locked up in their houses and that will provide a way of funding the survey and any costs for the purchasers information pack. Therefore, it would be for consideration whether local authorities should be directed to use their flexibility or whether that should be left to their discretion, or, indeed, whether we should provide the guidance that we thought that such support was unnecessary.

Christine Grahame: That is probably different from what local authorities would say, but there we are.

The Convener: I have a quick question about the right to buy. You reflected on the committee's recommendation on the right to buy, which is to be welcomed. However, your paper states that a report would be provided

"giving property information such as house type … and obvious problems with the house".

What do you mean by obvious problems? I am sure you appreciate that somebody can live in a house and not know, for example, that it has dry rot or rising damp.

Archie Stoddart: First, as you will see from our paper, we agree that right-to-buy purchasers need better information. However, and to take a slight step back, a number of the problems that have been raised with us about the information that people have also relate to people not understanding costs or forthcoming improvement programmes, which can delay landlords. The bill includes a power to specify what information will be provided.

Our vision of obvious defects was precisely of such things as dry rot or harling falling off a wall, which would be obvious. We would expect such information to be included in a survey. Allied with the additional information, the package is fairly powerful. The report is not identical to the single survey; in some respects it goes further. Obvious defects are just that.

The Convener: I wanted to clarify that such issues would be considered.

My second question is about shared equity properties, which will not be covered. Perhaps further consideration could be given to that issue. I appreciate that when someone invests in a shared equity property they are buying only part of it, but it is often the start of their getting on to the property ladder. If we are to give protection to people in right-to-buy properties who have rented for many years, because we believe that they need to know everything about the property that they are about to buy, perhaps we should do the same for people in shared equity properties, who often staircase their way up to home ownership.

Archie Stoddart: There are two issues associated with shared equity properties. If someone buys new into a property that has been marketed, we would expect a single survey to be provided. We do not want a single survey to be required when someone is tranching up. That makes no sense for the additional tranches.

The Convener: That is a helpful answer.

My final two questions are about the information that is to be included on the face of the bill. There has been criticism of the lack of information in the bill. Will part 3 be amended to take account of the progress that has been made in developing the likely content and form of the eventual regulations? Can you give us an indication of the timings for the introduction of the regulations?

David Rogers: The only amendments that we are considering for part 3 are amendments to provide flexibility in respect of timing, to which I have referred, to enable us to take up the option of requiring registration of surveys, if we need to, and to address specific provisions relating to the right to buy. We do not expect to bring forward a detailed scheme for either the single survey or the purchasers information pack. We believe that that information should be included in regulations. Much careful work with stakeholders is needed in order for us to get there.

I am not in a position to give a target date for the introduction of regulations. It is important that we develop a system in which consumers, lenders and advisers can have confidence. In doing so, we need to take the time to work with stakeholders to design the two schemes. The timetable will be driven by that. The detail could not be worked up in time for it to be included in the bill. I envisage that there will be at least a year of hard work after the bill is passed before the regulations are ready.

The Convener: Thank you for your attendance. The meeting will be suspended until 11.30 to allow for a changeover of witnesses.

11:28

Meeting suspended.

11:32

On resuming—

Planning

The Convener: Item 2 is the Scottish Executive's white paper "Modernising the Planning System". I welcome the Minister for Communities, Malcolm Chisholm, and his Executive officials: Tim Barraclough, who is head of planning division 1; John McNairney, who is head of planning division 3; and Michaela Sullivan, who is head of planning division 2.

I understand that the minister will make a short statement before we move to questions.

The Minister for Communities (Malcolm Chisholm): I had intended to make a longer opening statement but, in view of the time, I will just deal with the issues in questions.

Since my statement to Parliament on 29 June, we have been engaged in a major consultation exercise involving not just the normal written responses—those are still coming in—but various stakeholder events. Indeed, I will attend a Convention of Scottish Local Authorities seminar with 30 planning conveners today between 1.30 and 2.30. That timing might be unfortunate, in the sense that it might create a problem if the committee wishes to detain me for a prolonged period, but I hope that I will be able to answer members' questions satisfactorily so that that will not be necessary. However, we are genuinely interested in the views of a whole range of stakeholders.

There will also be a debate in Parliament fairly soon—I gave that guarantee on 29 June—so our proposals will have been the subject of a lot of discussion before the bill is published towards the end of this year.

Patrick Harvie (Glasgow) (Green): I will kick off with a question about the national planning framework. Some might have the inaccurate perception that people object to the very principle of having such a framework, but the concern that many people have is that the framework on which the Executive and Parliament are working might result simply in negative aspects of the current system being reproduced on a bigger, national scale. Does the minister accept that if the national planning framework is not to reproduce on a national scale the current mistrust and resentment about the way in which the planning system works, the highest level of public and parliamentary scrutiny will be necessary? How will that be achieved?

Malcolm Chisholm: Obviously, my starting point for modernising the planning system is that there are serious problems, both real and perceived, with the current system. Part of the problem is that people feel that they are not meaningfully involved in the planning system, so we hope to have more effective public involvement at all levels of the system, from the national planning framework to local development plans to individual planning applications.

Another important change will be greater parliamentary involvement—in addition to passing legislation, obviously—at national level. As I said on 29 June, we are clear that Parliament should play an important role in the formation of the national planning framework. We are still examining the details of that—they will need to wait for the parliamentary debate not too long from now—but we are certainly strongly committed to the principle of full parliamentary involvement as well as extensive public involvement.

Patrick Harvie: Will public involvement be conducted through a public inquiry?

Malcolm Chisholm: Are you referring to the national planning framework?

Patrick Harvie: Yes.

Malcolm Chisholm: That is not part of our current proposals. We believe that Parliament should be the key body that provides final scrutiny of the national planning framework, but there will obviously be full consultation and involvement with other stakeholders.

Once we have a national planning framework, public inquiries might still be undertaken into individual planning applications. The only issue that will be taken up by the centre, as it were, is the question of need. However, even that will not be a change from current arrangements, given that local inquiries can currently only advise on need and must leave it to ministers to make the decision.

We believe that the enhanced role that will be given to Parliament is entirely correct, as Parliament should be involved in strategic priorities such as those that will be contained in the national planning framework.

Patrick Harvie: How often is the national planning framework likely to come back to Parliament for consideration?

Malcolm Chisholm: The national planning framework will be updated regularly, with the first update taking place about four years after the publication of the first one. Parliament will also have a monitoring role, but the formation of the national planning framework will be on something like a four-year cycle.

Patrick Harvie: A national planning framework that is to be put in place for four years—and possibly for longer than that in future—will be a

substantial document that might have even more impact on people's lives than, for example, the budget process has. Given that the parliamentary process for scrutinising the Executive's budget is fairly substantial, does the minister agree that the process for scrutinising the national planning framework will need to be at least at the same level?

Malcolm Chisholm: It will certainly need to be substantial. The two processes are not exactly comparable, so I am not sure that comparing the process for the national planning framework with the budget process is necessarily very helpful. However, Parliament will certainly need to have a substantial involvement.

Christine Grahame: I would like to understand what the Parliament's substantial involvement might be. For instance, will the framework be a matter only for the committee or will it be a matter for a plenary session of the Parliament? What is your thinking on that issue?

Malcolm Chisholm: As I said in my introduction, the details will need to be discussed in the forthcoming parliamentary debate, which will take place pretty soon. As the final details have not been resolved, it would be premature for me to go into issues that have not been finalised. That is all that I can say about that at this stage.

Christine Grahame: Was the spatial development strategy for London or the regional development plan for Northern Ireland considered as a model for the way in which the Scottish Parliament might handle the national planning framework?

Malcolm Chisholm: No. Neither I nor my officials looked at that.

Christine Grahame: Would you consider looking at those models?

Malcolm Chisholm: Now that you have drawn them to my attention, I am sure that I will.

Mary Scanlon: I would like some clarification on development control, or development management as I believe it is now called. I would like clarification in particular about the four-tier hierarchy of development.

What criteria do you use to define developments of national significance? I cite the example of wind farms which, as you know, are a huge issue in the Highlands. I understand that there is a review of national planning policy guideline 6. I also understand that, under section 36 of the Electricity Act 1989, you automatically call in any proposals for wind farms that will generate more than 50MW. In future, will wind farms be part of the pre-consultation? Will the designation of land for a wind farm be included in the development plan? How will that fit into the hierarchy of significant developments?

Malcolm Chisholm: We have someone here who is working on the relevant Scottish planning policy and who may want to add something in a moment.

As I said to you on 29 June, a wind farm would certainly be a major development and would therefore be subject to the measures that are proposed for major developments as a whole in the white paper. There is important work to be done on the planning policy on renewable energy. It is impossible to predict exactly what the conclusions will be, but various options are being considered on how we manage that controversial territory.

John McNairney (Scottish Executive Development Department): At present, major wind farms—those generating more than 50MW—are dealt with under the Electricity Act 1989 and are determined by Scottish ministers. There is nothing in the modernising proposals that cuts across the arrangements for determining the larger-scale electricity consents.

Planning authorities determine applications for wind farm generating less than 50MW, and they will continue to do that. As the minister says, it is likely that the wind farms that they deal with will be classed as major developments, although that is still for consideration. Virtually all of them require an environmental impact assessment. If a wind energy proposal is made, planning authorities must provide up-to-date policies in their development plans to guide developers and to provide certainty for the community. That will remain the case.

National planning policy is set out in NPPG 6 and, as you know, we are at the start of a review of it. We are about to commission consultants to help us to prepare the strategic environmental assessment for it. The review will include various options, one of which is that we provide more prescriptive guidance for planning authorities about what they should put in their development plan, so that communities and developers have much greater certainty about what proposals will be considered acceptable.

Mary Scanlon: That is an important point. It is my understanding that the review of NPPG 6 started in July. However, I believe that the consultation will not start until January. Is that correct?

John McNairney: That is right. It is likely that we will have a draft for consultation at the start of next year.

Mary Scanlon: My concern is that the designation of land for wind farms does not fall within development plans, which gives rise to uncertainty. You are reviewing NPPG 6. It seems that the planning guidelines for wind farms may escape the proposals in the white paper.

Malcolm Chisholm: I do not see why that would happen.

Mary Scanlon: In future, will all land that is to be designated for wind farms be part of the five-year, up-to-date development plans that are a statutory obligation on local authorities?

11:45

Malcolm Chisholm: It will need to be. Obviously, the issue will depend on what emerges from the new Scottish planning policy, but all of that will need to be carried through into the development plans. There will be nothing in the legislation that will make that happen or not happen, as it will happen anyway.

Mary Scanlon: That is not what happens at the moment, as such developments are currently sited on agricultural land, or in forestry or on mountains. In future, will wind farm developers and objectors face the same pre-consultation process as other developers of land?

Malcolm Chisholm: Yes.

John McNairney: If I may, I should add that the current approach in national planning policy is based on criteria. We do not say that wind farms should be situated in a particular part of Scotland, as our policy is criteria based.

NPPG 6 leaves it to planning authorities to prepare their development plans, but it also provides that such plans may provide broad areas of search for wind farm development. Although not all development plans do that, our position is that NPPG 6 still provides the current framework for considering wind farm proposals. NPPG 6 is under review to take account of developments in other parts of the United Kingdom, so regional targets and more prescribed areas of search will need to be considered. However, at present, planning authorities have a framework of policies that they can use to determine any proposals that come before them.

Some authorities feel that they need more of a framework than they have at present. As the member will be aware, Highland Council and other authorities are pursuing their own, much more detailed policies to provide a much more robust local framework for determining applications. However, that is fine, as there is a limit to the extent to which the Executive should prescribe what happens locally.

Mary Scanlon: The issue is whether we have an ethos of reacting or of being proactive. For wind farms, most developers and objectors would prefer that consultation was required in the same way as for other matters that are subject to development control or development management.

Malcolm Chisholm: In future, whatever is in the development plans will be subject to the provisions of the legislation. Therefore, at that level, wind farms will be part of the consultation on the development plan. However, as major developments, wind farms will also be subject to development management and, because of the need for an environmental impact assessment, they will attract all the extra provisions that are mentioned in the white paper such as, obviously, pre-application consultation, hearings and enhanced scrutiny. At both the development plan stage and development management stage, wind farms will benefit from the enhanced measures that are outlined in the white paper.

Mary Scanlon: Thank you. It is important that we have that clarification.

What will happen if a development of national significance is at odds with the policies or proposals of a local authority's development plan?

Malcolm Chisholm: I am not quite sure how that would arise. Perhaps an issue could arise about a specific site for a development, but we are not saying that we at the national level will decide where a major development—such as a water treatment plant or whatever—should be situated. We will say simply that there is a need for the development to exist, but its precise location will still be for local determination. That is where the development plan will be relevant. Only the need issue, not the whole decision, will be dealt with on a national basis. All the other factors will still be dealt with at the local level.

Mary Scanlon: I have concentrated on wind farms, but I have finished my questioning on that subject. I seek more clarity on what is likely to constitute a major development. Why will that be defined in secondary legislation?

Malcolm Chisholm: Obviously, we need clarity and consistency across Scotland about what constitutes a major development, but we need a degree of flexibility, as things might change slightly over time and we might want to change the precise boundaries between the different categories. It seems to me that it is better to put those details into secondary legislation, which must also go through Parliament, and to allow the bill simply to outline the general differences between what constitutes a major development and what constitutes a local development, as that will be one of the main dividing lines. For example, we have suggested that larger housing developments will constitute a major development and lesser housing developments will constitute a local development. I am not sure that too precise a level of detail about such matters should be placed inflexibly in primary legislation. However, if you think that that point needs to be put, we will reflect

on it. Hitherto, I have not felt that it required that level of detail in primary legislation.

Mary Scanlon: It is a good point, but 100 houses could constitute a major housing development in a small village that currently has 10 houses but not in the city of Edinburgh. It would be helpful if you could provide additional information to clarify your thinking.

Finally, what would be the cumulative impact on the built environment of removing minor developments from the planning system?

Malcolm Chisholm: It would help to make the planning system more efficient. There is a judgment to be made—subject to the views of Parliament—on what should be classified as a minor development and therefore in effect taken out of the planning system. We are doing a major piece of work on that and are consulting on it. However, obviously we are thinking about household developments within a single household and things of that nature. We do not think that removing such developments from the planning system would have a significant impact on the built environment in any extensive sense, although obviously it would have a minimal impact on particular locations.

Removing minor developments from the planning system would help to make the planning system more efficient. One of the problems with the current planning system is that it deals with the whole hierarchy of planning applications in the same way. That has influenced the thinking behind creating a hierarchy. We acknowledge that there is a hierarchy of importance and that we should have different procedures corresponding to the level of the planning application in the hierarchy. That would not have a significant effect on the environment, but it would have a significant effect on the efficiency of the planning system.

Mr John Home Robertson (East Lothian) (Lab): I will pursue Mary Scanlon's point about the fundamentally reactive nature of the present system and the opportunity that we have to change it. She referred to wind farms, but it could just as well apply to any other kind of development. At present, a developer who sees a commercial opportunity puts in an application, which is considered in deliberations and inquiries and all the rest of it.

Is there not a case for turning that round for certain strategic developments, such as wind farms and other infrastructure? As part of the development planning process, the Executive or the local authority could identify preferred areas for certain types of development, such as wind farms, which would avoid the need to go through the futile process, from the developer's point of view, of incurring costs in applying for consent and, from the objectors' point of view, of incurring costs in opposing it. That could be avoided if, following appropriate public debate, preferred locations for particular developments were identified and developments were focused in those areas.

Malcolm Chisholm: That is exactly what we are trying to do in giving an enhanced role to the development plan. The corollary is that development plans must be up to date, so that if sites are identified on the development plan, the presumption is that there will be development there. We described that in terms of wind farms with the last set of questions, but it could also pertain to housing and many other developments. That is why an up-to-date development plan that does exactly what you say is the foundation of a more efficient planning system. It is also part of a more inclusive planning system, because the other big new thing that we are saying about inclusion is that local people should be involved in the fundamental formation of the development plan in ways that they never have been before. It will make the whole planning system work more efficiently if we have good up-to-date development plans that are the guides for where development will take place.

Mr Home Robertson: So the system could be community driven, rather than developer driven.

Malcolm Chisholm: Absolutely. That is the intention.

Cathie Craigie: I will move on to development plan issues. I agree with making the planning system more inclusive and making it involve local people. The consultation will be interesting, because it will go a long way to encouraging people to become involved in matters that are important to their community. The proposals in the white paper suggest that strategic development issues will be dealt with differently outside the four main cities following the abolition of the structure plans. Could you share with the committee some thoughts on how that will work?

Malcolm Chisholm: Are you talking about the city-region plans as distinct from—

Cathie Craigie: I am asking about how we will deal with the areas that are outside the city regions.

Malcolm Chisholm: If an area is outside the city region, it will have a local plan that will form the foundation for the planning system in that area. In the four city regions, a broader view needs to be taken that takes account of the city and its surrounding area. That is new and some parts of Scotland will be covered by only one plan whereas at the moment they are covered by two.

Cathie Craigie: Obviously, every area will have a boundary. How will cross-boundary issues be dealt with and how will local authorities link and liaise with those that are on the boundaries?

Malcolm Chisholm: I am not sure that I understand your question. There is only one local authority that is in two city regions. Fife goes down to the Edinburgh area and up to Dundee, but every other authority will either be in a city region or not, as the case may be.

Cathie Craigie: I take it that you will be discussing these matters today with the planning conveners.

Malcolm Chisholm: I am going to let them dictate the agenda because I want to know what their concerns are about the bill.

Michaela Sullivan (Scottish Executive Development Department): The intention is that the city regions will draw their own boundaries. It will be for the constituent authorities to decide where the boundaries should fall and what parts of their district belong to the city region. They will then prepare a local development plan for their entire area, including the parts that are not included in the city region.

You seem to be asking about what happens with issues that come up in the corner, if you like, of a local development plan area. I expect that when the authorities involved are preparing their plans, they will consult their neighbouring authorities as part of that process, as they do at the moment. Part of the statutory consultation process for a local plan would consist of sending the plan to the neighbouring authority and inviting its views. The planning authorities also meet one another when the plans are being prepared and they try to stay aware of possible cross-boundary issues. We expect that process to continue in the areas where there is no formal cross-boundary requirement.

Cathie Craigie: So if it was a large-scale strategic development, the authorities would need to discuss and liaise.

Michaela Sullivan: Yes, that is right.

Cathie Craigie: The white paper says that local authorities would have scope to go against a reporter's recommendation only if it is

"not in accordance with the National Planning Framework/National Policy or strategic development plan; or based on flawed reasoning".

It further says that

"particularly strong justification will be required from the planning authority"

for going against a reporter's recommendation. What would be "particularly strong justification"?

12:00

Malcolm Chisholm: On your last point, it is important for our inclusion agenda that we should state that a clear public view that is supported by the reporter should prevail. This is an area where I want to hear the views of the planning conveners today. That criterion is in the white paper, but I am keen to listen to the planning conveners about whether we have got the dividing line quite right. I certainly asked lots of questions about the matter, because I knew that local authorities might find it a sensitive one. The formulation in the white paper follows one that was in a planning document from before my time—perhaps it was in "Your place, your plan"—and there was strong public support for that position.

It is a case of getting a balance between the rights of local authorities and those of the public. We want local authorities to be at the heart of the planning system, but equally we have to protect the public when a strong local view is expressed. As I say, I am prepared to look at what the precise dividing line should be, but the current formulation commanded a lot of support when it appeared in the earlier document.

Cathie Craigie: We hope that development plans in which people can have faith will be put in place. People should feel that their communities and everyone who has an interest in the plans has been involved in building them so they can look to their future success.

Perhaps the main development plan is different but, as we know, local plans are notorious for lying on shelves gathering dust because some local authorities have not kept them up to date. In the consultation document you suggest that Scottish ministers would take responsibility for chasing up local authorities when plans were not kept up to date. How do you propose to do that? I presume that Scottish ministers have some power under existing legislation to force local authorities to keep plans updated.

Malcolm Chisholm: Scottish ministers have the power to intervene and make development plans, but that power has not been used. It is a reserve power. I cannot talk about the history of the past however many years, but we are now placing more importance on development plans. Therefore, the necessity of keeping plans up to date is absolutely central to the reforms that we propose.

The system has been able to tick along, albeit inadequately, without that power being used. We are clear that when development plans are out of date, we will require planning authorities to prepare new plans as soon as practicable after the legislation comes into force. It is anticipated that authorities will commence replacement plans as a

matter of urgency as soon as the legislation is in place. We will also require development plans to be prepared at least every five years. That is central to our proposed reforms. The timing of the development plans is crucial.

Going back to your previous question, the involvement of the public in the plans is the other absolutely central matter and that is why we included provision for it. If the public are to be involved in a new way, we must assure them that their views will be heeded rather than just discarded by the local authority at the end of the day.

Cathie Craigie: You have said this morning—and in the white paper—that the Scottish Executive is looking for a culture change in the way that we deal with planning. Will you expand on that and tell us exactly how you want the culture to change?

Malcolm Chisholm: The two pillars of the process that we describe are efficiency and inclusion—those are the two fundamental principles on which we want to base change. We all know about the inefficiencies of the current system. You highlighted one of those in relation to development plans and another is the speed with which some planning applications are processed. We require a culture change in the primacy given to development plans and in the speed with which they are dealt. However, an equally important culture change will be the meaningful involvement of the public at all stages in the planning system. That might be an even bigger challenge because it includes an even more radical set of proposals. A lot of training will have to be done and a lot of good practice will have to be learned for that to happen.

Patrick Harvie: I will follow up one of Cathie Craigie's questions. The white paper proposals about decisions that reject the findings of a reporter's inquiry would probably have most people's sympathy. When people get to the end of an inquiry they may feel that they have won the argument on the detail and expect that to influence the decision. Why should that principle not also apply to decisions made at a national level when a minister has rejected the findings of a public local inquiry on, for example, an urban motorway project?

Malcolm Chisholm: In a democracy there is always the question whether we give some status to the decision-making power of national Parliaments or whether that should be subordinate to something else. I find it difficult if you are saying that you do not trust national representatives to decide on national priorities. Remember that they do not decide on all the details of where a development will take place. In the parliamentary debate on 29 June I gave the example of the Borders railway, but my point was that, with our new Parliament, it should not be the right of local bodies to decide whether there should be a Borders railway or compliance with EU directives on water treatment or whatever it happens to be. We must give a proper place to elected politicians, although many others obviously have a strong role in the system.

Patrick Harvie: At last week's question time you answered a question from me about sustainable development. One of the most important aspects of changing the culture of the planning system is to change our understanding of what it is for. You told me that you were looking at how provisions on sustainable development could be worded in the bill. Where has your thinking got to on that?

Malcolm Chisholm: We will say more about the matter in the debate when the bill is introduced. I certainly regard sustainable development as being at the heart of the planning system, but there is an issue about exactly how that should be translated into legislation. As you will know, it has been done in one way in England through development plans. That has a certain attraction and we are considering such an approach, but no doubt Patrick Harvie and others will make other suggestions.

We want to put a provision in the bill but, as you say, it is even more important to secure a culture change on sustainable development. All the other measures that are in place—such as the SEA that is required for all development plans and for the national planning framework and the enhanced procedures wherever an EIA is required, which I mentioned earlier in relation to wind farms—assure people that the environment will be at the heart of the planning system. A series of measures demonstrate the importance that we attach to sustainable development, but we would certainly also like to include a provision in the bill.

Mary Scanlon: I have a supplementary to one of Cathie Craigie's questions. Many measures in the forthcoming bill rest on development plans being up to date—that is central to the bill. Given that 73 per cent of local authorities do not have up-to-date development plans, what action do you propose to take should local authorities not comply with that provision?

Malcolm Chisholm: I said something about that previously. We envisage that the preparation of new development plans will be phased because local authorities with up-to-date plans will continue to use those until they expire. Obviously, the focus will be on authorities that do not have an up-to-date plan. I referred to what we required to happen in that case and I mentioned the reserve power that we already have to intervene. Although that power has never been used, that is not to say that it could not be used in the new world in which

development plans will be more central. However, I happen to believe that if something is in an act of the Scottish Parliament most local authorities will obey it, so I do not anticipate any great resistance from them. Obviously, if there was such resistance we would take appropriate action and we have the power to intervene if we have to.

Mr Home Robertson: The concept of the city region obviously makes good planning sense, but it will inevitably give rise to some anxiety from local authorities outwith the cities—or from surrounding villages, to borrow a phrase from the convener. It is clear that the system will work only if there is a genuine consensus among the local authorities in an area. It would not work, and it would not be acceptable, if Edinburgh made planning decisions for East Lothian, West Lothian or Dunfermline, and the same applies to Glasgow and Lanarkshire. Do you have anything in mind to ensure that there are proper checks and balances and safeguards?

Malcolm Chisholm: This is not a new situation. We propose that officials are seconded from all the authorities to work on the new plans. I do not know whether Michaela Sullivan wants to say any more about that, but presumably the lessons from structure plans will be applied.

Michaela Sullivan: Yes. The most successful example of structure planning is probably the Glasgow and Clyde valley structure plan. It uses a team of people who are seconded by the local authorities and are dedicated to structure planning rather than going in and out of other duties. It is their role to prepare the structure plan, and that is the model that we are looking to use. At the moment, the local authorities in Edinburgh and the Lothians have their staff going in and out. There is no continuity or consistency because there is no dedicated team responsible for preparing the structure plan. That has led to problems, so we want the city regions to have a dedicated team of staff who are responsible for preparing the city-region plan. Those staff will not have the individual local authority ties that staff have had in some areas.

Mr Home Robertson: That explains about the staff, but when it comes to the crunch and a difficult decision has to be made can you guarantee that people in the counties around Edinburgh, Glasgow or wherever will not be dictated to by the city authorities?

Malcolm Chisholm: We have to approve the plans. I am sure that you will have great confidence in me to ensure that East Lothian is not overlooked in such a situation.

Mr Home Robertson: We will have to wait and see.

The Convener: Enforcement has been flagged up as a key part of the legislative proposals. Many communities believe that, in the past, enforcement has been extremely lax. Do you believe that the proposals on enforcement are sufficient to rebuild communities' confidence that when a breach occurs it will be dealt with so that it does not happen again? Most important, will the proposals enable us to get away from the culture whereby developers think that it is acceptable to start off by breaching the terms of their planning consent and to wait until they get caught rather than policing themselves?

Malcolm Chisholm: We certainly regard that as important. Obviously, we think that our proposals will improve the situation, but, as I said in June, we are open-minded about anything else that may be required. There is no doubt that we have to discourage unauthorised development and breaches of planning control. We have to deal with breaches quickly, efficiently and rigorously and we have to promote public confidence that the planning system operates fairly and in the public interest.

In summary, we propose proactive enforcement. We will introduce a notification of initiation of development, which will require persons with planning permission to notify local authorities when they are about to start development. That will enable authorities to monitor on-going development. We also propose temporary stop notices to allow local authorities to stop development immediately where there has been a breach of planning control. That cannot happen at present, so that is a new power. We will also clarify use of the planning contravention notice to encourage its use by authorities as it is important where prosecution is intended.

We also intend to investigate restrictions on the right of appeal against enforcement notices. There are other measures, but the convener might not want me to go through all of them. They include the raising of fees for retrospective applications and a requirement on all local authorities to produce enforcement charters.

We are confident that our package of measures will improve the situation. However, as I said, if it is shown to be inadequate, we are open-minded about doing more. Indeed, we will listen constructively to any proposal for doing more that is made during the legislative process.

12:15

The Convener: The range of measures that the minister proposes has considerable merit and the potential to work. My concern is whether the local authorities will be in a position to enforce them. Unfortunately, despite the fact that planning consent often has a range of requirements attached to it, the reality is that nobody ever checks up on whether the conditions are met.

Again, my concern is that the emphasis and burden of having to police planning consent will rest on communities. We have to have a culture where the whole community takes responsibility for enforcement. Will the local authorities have the resources to properly enforce the terms and conditions of planning consents when granted?

Malcolm Chisholm: The issue of resources relates to several aspects of the bill although, equally, other proposals will free them up. For example, the overall package of measures on simplifying development should enable local authorities to manage and reorder their budgets more efficiently. In the context of the pending review, issues of resources can certainly be looked at as far as anything to do with the legislation is concerned.

Obviously, the Executive is trying to encourage and enable local authorities to monitor development more closely and to take a more proactive approach to planning enforcement. The situation will be helped by local authorities being given new powers, but the fact of the matter is that they do not always use the powers that they have been given. Perhaps part of the culture change relates to that. I am confident that the local authorities will respond on enforcement, which is one of the main areas of public concern.

I am interested in what the convener said about planning conditions. It may well be that we should think about having fewer conditions attached to the granting of planning consent but ensure that those conditions that are attached are enforced. That may be part of the culture change too.

The Convener: I could not agree with you more, minister. Quite often, planning applications are granted with a whole raft of conditions but, as the conditions are never enforced, they are meaningless. Communities come to feel that they should oppose any future development, not because they are against all developments or because they are nimbys, but because their experience of development is negative. It is about time that planning consent conditions came to mean something; people should be able to have confidence in them.

Minister, you said that you will meet the Convention of Scottish Local Authorities later today. COSLA and the local authorities are not the only organisations that make an input into enforcement. The Scottish Environment Protection Agency has particular enforcement responsibilities. Are you in discussion with SEPA? Are you also in discussion with the Crown Office about prosecutions where appropriate? The experience in Scotland of enforcement has been pretty poor. I am thinking in particular of court cases involving breaches of planning consent.

Malcolm Chisholm: I have not personally held discussions with SEPA, although I imagine that the officials have. I will ask them to speak on the matter. In am aware of the point that you raised on the Crown Office, convener, and I will discuss it with the Lord Advocate.

Tim Barraclough (Scottish Executive Development Department): Right from the outset, we have kept SEPA involved in the development of the proposals. We are fully aware of the enforcement issues that the convener mentioned. Obviously, there are differences between the enforcement of planning decisions and the enforcement of environmental legislation. We have to work within the boundaries of both regimes. SEPA is fully involved in the process.

The Convener: But the two things mesh together.

Tim Barraclough: Yes, they do.

The Convener: I am thinking in particular about landfill and opencast sites and the breaches that occur, such as discharges into the watercourse. SEPA has to work in partnership with the local authorities.

Scott Barrie (Dunfermline West) (Lab): I turn to resources, which Karen Whitefield has already mentioned. If we are to be effective on enforcement, we must have the resources, but it is not just on enforcement that there is a problem. A number of planning authorities have a severe problem in recruiting and retaining planning professionals. Given that we are to put more demands on planning authorities, are you confident that there will be sufficient numbers of qualified staff to carry out the necessary work? Karen Whitefield is right—there is a problem not just with the conditions that are attached to planning, but with the lack of staff at appropriate levels in the planning process to deal with the current workload, never mind what might come along in future.

Malcolm Chisholm: That is obviously an issue, although to some extent it is addressed in chapter 7 of the white paper. Pages 50 and 51 list a series of reforms that will require more resources, as well as reforms that will release resources. I will not go through the lists. I simply state by way of introduction that there is a bit of balance in the white paper.

That is not to take away from the need for more staff and for culture change within planning departments. We are mindful of that. I am glad that we do not face as much of a crisis as many parts of England. When I examined some matters in London this summer, I was told that some authorities there had no planners at all. We are certainly not in that situation, but we must keep attracting planners into the public sector. We are

keen to do that and have a series of measures to help us to achieve that goal. There is the planning development fund that I announced a few months ago, which is helping to deal with the training of people who are already in positions in local authorities. One of the officials might have some broader comments on the recruitment of planners.

Tim Barraclough: We have been in discussion with the planning schools and the Royal Town Planning Institute as key players in ensuring not only that the right flow of planners come into the system, but that they have the right set of skills. The planning development budget, which is aimed at existing planning professionals, is partly intended to address that major issue.

We must ensure that roles within planning departments are allocated to the right level. It might not be the case that we need many more planning professionals, but that planning technicians—people who are not fully graduated planning professionals—could play an enhanced role. For example, the processing of applications could be done by planning technicians rather than by planning professionals. We are discussing a range of issues with the RTPI, the planning schools and the planning authorities, including the allocation of resources, the supply of planners and their recruitment and retention. The issue is live.

Christine Grahame: I will try to be brief. My question relates to public involvement in planning, which the minister and his team have already addressed. On resources, I notice that you will increase funding for Planning Aid for Scotland. According to the white paper,

"the Executive has made funding of up to £100,000 available for each of the next two years."

Additional funding will also be provided through the sustainable action fund.

If we are to create a level playing between first party, second party and third party—the community—we must give communities a genuine opportunity to present their case, which they are often not able to do throughout all the stages of the planning process. Much of what is proposed is welcome, such as pre-application consultation, which will help to remove difficulties early on in the process.

How do communities get to know about organisations such as Planning Aid for Scotland? Like many members of the committee, I meet communities that are firefighting and do not know about the resources that are available. How will you inform them of that funding so that they can have a proper input from the start? My question is about funding and where communities can get information on how to obtain it.

Malcolm Chisholm: We must introduce a culture change on community involvement and we have a lot of work to do on the detail if that is to be effective. If I am committed to anything in the white paper, it is to ensuring that the community involvement process works. That is central for me. If extra resources are required, we must consider that. However, I am sure that that is not the only issue and that there are many other things that we require to do, not least to change the culture of planning departments in local authorities in terms of the public involvement agenda.

We must also ensure that the developers are part of this. I am encouraged to hear that, at present, some developers are seeing the advantage of the proposals, taking on board what local communities are saying and getting their planning applications through more quickly. There are already some good examples of communities being involved at an early stage; we want to build on that and do a lot more of it.

The other area to mention, which I have already touched on, is the new involvement around development plans. There will now have to be a consultation statement, which is a new feature and something that we will look at when we look at development plans.

There is a whole series of proposals around the white paper, and I am not saying that resources may not be part of that. If more has to be done to support the white paper's proposals from a financial point of view, that is what we will do.

Christine Grahame: That is interesting. Let us move on to good neighbour agreements, which are an excellent proposal. You are going to work up a system that we will no doubt hear about in due course. I see that you are going to introduce a hearings system linked to that whereby parties can object. We are informed that under the proposed system,

"developers and objectors can present arguments for or against a development prior to the committee making a decision."

That is very adversarial, although perhaps it has to be in certain places. Would you consider inserting in the proposed planning bill a mediation procedure? I have batted on about this in the chamber many times, having been converted on a visit to Maryland. Such a procedure is used there in many commercial situations, and there may be an opportunity to engage the public throughout the process through hearings, and then to proceed to mediation. People are not always opposed to an entire development; they are sometimes opposed just to bits. A mediation procedure could be put in place and the outcome could contractually bind the parties—the developer, the person granting the application and the community—to certain issues right away. Would you consider putting such a procedure in place? That would be a new procedure in Scotland.

Malcolm Chisholm: I am open to considering that suggestion. It is not something to which I have hitherto given attention, but it could be relevant either to the general process of pre-application consultation or to the formation of good neighbour agreements. The purpose of the agreements is to encourage developers to take into account the views of local representative groups in their operation of a site or facility. There may well be a role for mediation in that; it is something that I am happy to reflect on.

Christine Grahame: Even so, I am disappointed by the white paper's complete disregard for a third-party right of appeal. I am not in favour of a full-blown third-party right of appeal in all circumstances, but there is a role for such an appeal, given what you say in the white paper about equality in the planning system.

We are told that there will be robust pre-planning consultations, hearings and then—perhaps—mediation. There is still a place, at the end of all that, for a third-party right of appeal in certain circumstances; for example, when a planning authority or planning officer says that a development should not proceed but it still gets the go-ahead, or when there are environmental issues but a development still gets the go-ahead. If there was substantial community objection—that would depend on what constituted a community in the case of an individual application—that community should at least be entitled to a third-party right of appeal. There could be a filter system, just as there would be for developers, if there was a substantive interest. That would restore confidence to communities. Such a right of appeal would be limited, but I understand that it works in Ireland, where 60 per cent of appeals have led to revised conditions. Why has the white paper taken such a stance against the third-party right of appeal?

Malcolm Chisholm: I know that some members in each of the four main parties in Parliament take that view; however, the fact is that none of the four main parties takes that view as a matter of party policy.

12:30

Christine Grahame: We do.

Malcolm Chisholm: I am going by how parties represent themselves in Parliament; obviously, I do not know what is written in documents. From what parties' front-bench members and leaders say, it is clear that none of the four main parties supports a third-party right of appeal.

The idea of a third-party right of appeal is attractive at a certain level. The issue exercised me more than any other in the planning white paper in the past few months. However, I am not sure that such a right would satisfy communities in the way that Christine Grahame suggests it would. Involvement of people at an early stage will offer a better chance of enabling them to have meaningful influence on what happens in the planning system.

Other problems with a third-party right of appeal relate to the ways in which it would act contrary to the efficiency of the system. We know that the process is already too protracted; the third-party right of appeal would exacerbate that situation. A large volume of third-party appeals would have an even more fundamental effect on the working of the system as a whole. I accept that the third-party right of appeal is attractive at a certain level, but its overall effect on the planning system would be detrimental. It would not satisfy communities, which would be far more likely to influence the system if they could be involved earlier.

Christine Grahame: What I said was predicated on the fact that I think that are many good things in the proposals. I agree with the elements that put everybody—local authorities, the developer and the community—on their mettle, but my point of view is not based on fantasy. The third-party right of appeal is my party's policy and that policy is working elsewhere in limited circumstances. Obviously, I will continue to press you on the issue and I will seek to persuade you to our point of view. We are in favour of a strong bill that will make the planning system much more responsive throughout all of its levels.

Malcolm Chisholm: As I said on 29 June, I look forward to the debate on the subject. Obviously, the third-party right of appeal will be one of the major issues that runs through discussion of the bill in Parliament. However, it seems to me that there are more effective ways for people to be involved in the process. Furthermore, the third-party right of appeal would take decision-making power from local authorities. I know that people ask why, if that is the case, developers have a right of appeal. However, you can be sure that I have considered that issue as well. I am aware that there are severe difficulties in the area and that it would be impossible to remove that right of appeal from European law. I know that people want to equalise the planning system, but that cannot be done by removing that right from developers. Of course, it is possible to do what we have done and to restrict that right as far as possible by reducing the time that is available for appeals and by ensuring that the appeals procedure does not start from scratch but involves an examination of the issues that were before the planning committee in the first place. We are doing what we can to curtail the appeal rights of developers within the constraints of European law. That is what is best in terms of the overall efficiency of the system and the aim of effectively including communities.

Christine Grahame: Are you saying that no third-party right of appeal would be European convention on human rights proof, in the sense that communities would not have had their rights under the ECHR sidestepped?

Malcolm Chisholm: The ECHR issue that I raised was to do with the rights of appeal of developers—

Christine Grahame: I understand that, but communities also have ECHR rights.

Malcolm Chisholm: Obviously, a third-party right of appeal would not be against the ECHR, but it is obviously not a right that is enshrined in the ECHR; the Irish example notwithstanding, most countries do not have a third-party right of appeal.

Patrick Harvie: Sometimes, the way that some arguments lead into the third-party right of appeal is quite tricky. I would like to ask a question about the developer's right of appeal.

If there is to be an appeal stage, people must have incentives to engage in it. You are right to say that, if communities can engage at an early stage, they will have more influence on the process. If we can get that right, it will be hugely beneficial. However, if we want people to do that, they must have a sense of trust and a feeling that they will be listened to—not just that they will have a voice, but that the voice will be heard and their opinions taken into account. Will you ensure that planning authorities have an obligation to take account of people's views when they are expressed in pre-application consultations or hearings?

I understand that we cannot abolish developer appeals and I support your moves to reduce the timescale for such appeals and the number of grounds on which they can be made. However, do you share my niggling concern that shortening of the timescale will simply lead to more developers automatically appealing for fear of running past the shorter timescale? I am also concerned that the inability to introduce new arguments or evidence at the appeal stage might be problematic. For example, if a change in market conditions in an industry results in the economic case for a development becoming marginal and being outweighed by its social and environmental cost, should not that be taken into account? I am sorry that I asked so many questions, but they all lead in the same direction.

Malcolm Chisholm: You obviously support the changes to developer rights, although you flagged up concerns about the two parts of those changes.

Patrick Harvie: I support the principle or intention behind the changes.

Malcolm Chisholm: On your final question, we cannot be inconsistent on that matter. I understand why you say that an issue should be considered if it is advantageous to those who object to a proposal, but we need a level playing field in the procedures that we adopt. I understand that what you describe might happen in theory, but I am not sure how often such a situation would arise in practice.

On reduction of the timescale for appeals from six months to three months, we will have to wait and see what happens, but I do not think that your argument is a case against making the change. Another proposal is to screen out appeals that will self-evidently not be successful, which will cut down the number of appeals that will be heard and which will pull in the opposite direction from that which you fear.

I suspect that you made another point, but I cannot remember what it was.

Patrick Harvie: It was about giving people a sense of having rights, to give them an incentive to participate earlier.

Malcolm Chisholm: That is an important point. I have given a commitment today that it is a major priority for me to ensure that the system works. Obviously, part of that will be to ensure that people's views are taken into account. I do not know how we can put that into legislation or what words we could use, but we should consider how to do so. Some people may suggest that local people's views should automatically be the determining factor, but others can see the difficulties with that; important and socially necessary developments might not go ahead if we followed that principle. I sense that I have discussed the issue before, when I held the health brief. We must ensure that involvement is effective and that people's views are taken into account. I am open minded about finding the correct formulation of words, but it is perhaps even more important to ensure that we develop practice that makes that happen. We are developing the planning advice note on public engagement and a programme of work is being carried out. However, I do not say that part of that should not be to find the right words, for either primary or secondary legislation, to describe what we want to happen.

Patrick Harvie: My final question is not specifically about developer rights, but about the balance between the two sides at the appeal stage. Do you accept that, given the current pressure that the system is under in some parts of the country, the presence of a developer right of appeal puts planning authorities under a great deal of pressure to avoid being taken to appeal, with the result that they grant planning consent for developments when they would prefer not to do so? Is not that another argument for rebalancing the rights at the appeal stage?

Malcolm Chisholm: I do not know. One of the officials might wish to comment on their much wider experience of individual planning applications. I know that people say that what you have described happens from time to time, but I do not know to what extent it happens. I am not quite sure what we can do to eliminate altogether the developer right of appeal.

Tim Barraclough: I am not sure that we are aware of any evidence that what Patrick Harvie described is prevalent in any part of the country.

Patrick Harvie: I am happy to send you details of some of my favourite examples in Glasgow, if you like.

Tim Barraclough: One of the other important changes, which is relevant to this, is the requirement that planning authorities give reasons for their decisions on both approval and refusal of applications, which will help to make the system more transparent.

Patrick Harvie: You do not, however, see the appeals stage as being one of the drivers of the imbalance in rights in the system. It is one of the things that results in decisions being made overwhelmingly in favour of developers rather than in a more balanced and equitable way.

Michaela Sullivan: We have the determination under section 25 of the Town and Country Planning (Scotland) Act 1997, under which applications are supposed to be determined in accordance with the development plan. I do not think that there is a huge body of evidence that determinations are being made just to avoid an appeal if they are not in accordance with the development. That is the purpose of the development plans.

Patrick Harvie: Perhaps once they are more up to date, things will be better.

The Convener: I think that we can all agree that development plans should be up to date. I ask Cathie Craigie to keep her points brief, because another member requires to ask questions.

Cathie Craigie: I will do that. The call for a third-party right of appeal came before we got the planning consultation document and before we started talking about involving communities much more in planning decisions. The debate on that has not moved on to address what is in the planning document. However, there does not seem to be a level playing field—we have talked about that quite a bit—given that a developer can appeal against a decision but an objector cannot. I do not agree with a blanket third-party right of appeal. Ms Sullivan spoke about the development plans. We are now going to have development plans that involve communities. If a planning authority deviates from the development plan that we have all agreed, a developer should have a right of appeal. If the consent deviates from the development plan, an objector should have a right of appeal. That seems fair to me. I ask the minister to address that before a bill is published. Given that we are encouraging people to put so much time and resources into developing the plans for the future, if there is deviation from the plan, there should be an appeal process.

I have another brief point to make on the pre-application consultation. Consultations are only of worth if people feel that as well as being consulted, they are involved and can participate in decision making. Most members of the Scottish Parliament welcomed the Executive's decision to introduce pre-application consultation when we were dealing with telecommunication masts. Do you have any research findings on how pre-application consultation has gone that you could share with us, perhaps not today but as we consider the bill?

Malcolm Chisholm: On your first point on the enhanced and more central status for development plans, you are right that many decisions should be a lot clearer. I described the sifting procedure whereby a developer has the formal right of appeal, but if the appeal is against something that is clearly in the development plan, it will be discarded very quickly; the matter will not go to a full appeal. Developers will be exercising their formal right of appeal, but that is precisely the kind of thing that will get screened out at an early stage. I think that that goes a considerable way towards meeting Cathie Craigie's wish.

Although Cathie Craigie spoke against the third-party right of appeal, she seemed to be saying that if something was agreed against the development plan there should be a right of appeal. We propose for such situations the enhanced procedures, including the pre-application consultation, the hearings and the enhanced scrutiny arrangements, whereby an application would be referred to the whole council. Of course, there would also be the call-in option for the Executive. There are many other things that can happen when local authority goes significantly against a development plan. Are you suggesting that, in that situation, there should be a third-party right of appeal?

12:45

Cathie Craigie: It will be interesting to look at the matter more closely. If a local authority refuses an application, a developer has a right to make an appeal. If the local authority refuses or grants an application where there are objectors, will they be protected by the call-in situation? If the local authority has breached its development plan, that has to be reported to you or your officers, so is the proposal that the plan would be called in?

Malcolm Chisholm: You will see from page 40 of the white paper that, as part of the enhanced scrutiny procedures, such an application must

"be notified to Ministers, to consider whether to clear the application back to the Council or call in for determination."

In that situation, an application would be notified to ministers, who would obviously have then to make a decision about it. That is an important part of the enhanced scrutiny procedures. We are reacting in various ways to the situation in which a local authority goes against a development plan, but we are not doing that through a third-party right of appeal, although our proposals will have the same effect.

Cathie Craigie: We shall need more explanation of that as we go on.

Mary Scanlon: I think that we probably all agree that there is a need to restore trust in meaningful and effective consultation, but what are the criteria for a meaningful and effective consultation? I understand that you are working on the planning advice note. When will it be available? It would be helpful, given that we are taking so much evidence from local people and developers, to have that information during our deliberations, so that we can perhaps reassure people that they are being listened to.

On consultation on the new PAN, I ask the minister to take into account an important point about an incident that happened last week. I am sorry, but it was in relation to a wind farm. The developer consulted Berridale and Dunbeath community council very meaningfully, effectively and honestly in December 2004, but the siting of the turbines and their visual impact have changed significantly since then. However, the developer is refusing to meet the community council and is saying, "We've already consulted you," and it will not see the community council until after the consultation process is over. When you are drawing up the new planning advice note, will you consider whether there should be secondary consultation if significant changes are made to a development between consultation and processing of the application?

Malcolm Chisholm: That is a detail that we would certainly want to think about and, I hope, incorporate. I accept what you say about wanting the guideline to be finalised as soon as possible, but my response is that we must do it as effectively as possible. We are quite proud of our consultation procedures in the Parliament, and not least in connection with this matter. We shall have a stakeholder group that includes people who have been involved in local campaigns, as well as planning professionals.

We have to do the work properly, but I cannot guarantee that it will be finished in time for stage 1 of the bill, if that is what Mary Scanlon has in mind. However, we can provide updates and the committee will have the opportunity to provide feedback. I accept that the committee wants to be sure that the process is effective.

During the passage of the bill, Parliament will have many ways of feeding its views into the process. I am sure that people will even be able to think of amendments to the bill, if they think that that would help to make it meaningful. In his question, Patrick Harvie suggested that the views of local people should be taken into account. There will be lots of opportunities for that, but I cannot guarantee that the specific work on the planning advice note will be finished in the time that Mary Scanlon suggests.

Mary Scanlon: You are currently consulting on the new planning advice note.

Malcolm Chisholm: We are forming a stakeholders group at the moment.

Patrick Harvie: The minister is right: we might come up with one or two amendments.

You talked about consultation that Parliament conducts. Do you realise the scale of people's scepticism about consultation—particularly the consultation on third-party right of appeal? There was an overwhelming response in favour of such a right of appeal, but it fell on deaf ears. Do you realise the scale of the scepticism that you will have to get over if you are going to give people reasons to get involved in the planning system?

Malcolm Chisholm: There is obviously scepticism to do with people's involvement in planning and many other issues. Patrick Harvie raises a specific example but, with third-party right of appeal, there are acute divisions within all sorts of groupings. Christine Grahame corrected me on the SNP's policy earlier, but all four major parties in Parliament contain a strong body of opinion against a third-party right of appeal. It is not for me to say what the official SNP policy is, but the four largest political parties in Parliament—although perhaps not Patrick Harvie's party—certainly contain people who fall on either side of the fence on that particular issue. The majority in my party opposes the third-party right of appeal.

There is division within groups in the community as well. In the consultation on third-party right of appeal, a certain number of people said one particular thing. However, opinions are very strongly divided. I am trying to build a greater degree of consensus around meaningful involvement from the earlier stages of the planning process. We can make progress on that front, although we have to accept that all sorts of groups are acutely divided on the issue.

The Convener: That concludes our questioning, minister. Thank you very much for your attendance and for your patience in waiting to appear in front of the committee.

Meeting closed at 12:53.

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