COMMUNITIES COMMITTEE

Wednesday 11 January 2006

Session 2

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CONTENTS

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COMMUNITIES COMMITTEE
1st Meeting 2006, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Euan Robson (Roxburgh and Berwickshire) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Christine Grahame (South of Scotland) (SNP)
*Patrick Harvie (Glasgow) (Green)
*Mr John Home Robertson (East Lothian) (Lab)
Tricia Marwick (Mid Scotland and Fife) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Alex Johnstone (North East Scotland) (Con)
Christine May (Central Fife) (Lab)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Tim Barraclough (Scottish Executive Development Department)
Jim Mackinnon (Scottish Executive Development Department)
Michaela Sullivan (Scottish Executive Development Department)
Lynda Towers (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Wednesday 11 January 2006

[THE CONVENER *opened the meeting at 09:37*]

Planning etc (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): I open the Communities Committee's first meeting in 2006 and remind everyone present that mobile phones should be turned off.

Item 1 on today's agenda is the Planning etc (Scotland) Bill. The committee will hear evidence on the bill from Scottish Executive officials. I welcome Jim Mackinnon, who is the chief planner, Michaela Sullivan, who is an assistant chief planner, Tim Barraclough, who is the head of planning policy and casework, and Lynda Towers, who is a deputy solicitor at the office of the solicitor to the Scottish Executive.

Thank you for taking the time to come to the committee today. The committee has many questions to put to you on the detail of this long-awaited piece of legislation. I will start with a general question about consultation. Has the Executive engaged effectively with key stakeholders who have an interest in the reform of our planning system? Were their views taken into account as you prepared the bill?

Jim Mackinnon (Scottish Executive Development Department): Thank you for the opportunity to give evidence to the committee.

You asked about the amount of consultation that we have undertaken. As you said, the Planning etc (Scotland) Bill is a long-awaited bill. In the past few years, there has been a lot of consultation on planning. The first big consultation paper was the "Review of Strategic Planning", which covered the options for the structure of development planning in Scotland. We followed that up with a more detailed consultation called "Making Development Plans Deliver", which set out what we thought was required to bring development plans up to date. It focused on four key themes: management, engagement, focus and delivery.

We issued a white paper called "Getting Involved in Planning", the conclusions of which were announced in "Your place, your plan". We also issued the consultation papers "Modernising Public Local Inquiries" and "Rights of Appeal in Planning". All of that was brought together in the white paper in June 2005, and during the summer months we had an extensive programme of consultation with a wide range of stakeholders. I have done more than 40 presentations on planning reform for various audiences in various parts of Scotland, including local authorities, environmental organisations and business organisations. We have received more than 350 responses to the white paper. There has been an enormous amount of consultation in preparation for this piece of legislation.

Mary Scanlon (Highlands and Islands) (Con): I would like to ask a few questions about the national planning framework. What criteria will be used when defining a national development?

Jim Mackinnon: I am not sure how familiar you are with the current national planning framework. The current framework, which was introduced almost two years ago, sets out a long-term spatial development strategy for Scotland. It was one of the outcomes of the "Review of Strategic Planning", which I mentioned to the convener. The initiative was given a warm welcome across the board, but there was a feeling that the next national planning framework had to go further and identify priorities for development that would support the strategy. That call came not least from the Finance Committee's cross-cutting review of expenditure.

We are seeking major developments that will support national planning framework 2, some of which will flow from Executive policies on transport and other issues. There will be an extensive consultation on the framework. This time there will be a formal consultative draft. No doubt organisations throughout Scotland will have projects that they want to be identified as national developments. The intention is that the next national planning framework will have a long-term strategy and that annexed to it will be a list of projects that are essentially about the public infrastructure that is required to deliver the strategy.

Mary Scanlon: Basically, are we talking about motorways, airports and nuclear power stations? What else would you add to the list?

Jim Mackinnon: Ministers have made clear the position on nuclear power. Essentially, we are looking at issues such as transport, major public infrastructure, waste, water and drainage.

Mary Scanlon: That is very helpful.

I turn to the issue of parliamentary scrutiny. Proposed new section 3A(8) of the Town and Country Planning (Scotland) Act 1997 states:

> "The Scottish Ministers are to consult such persons or bodies as they consider appropriate in preparing or revising the framework."

That is a bit vague. How extensive will the consultation during the preparation of the next

national planning framework be? Will you issue further guidance to ensure that people are included?

Jim Mackinnon: When we drew up the first national planning framework, which did not have a statutory basis—we are now proposing that the framework should have a statutory basis—there was a lot of uncertainty about what the framework was. We approached the issue by having a first round of seminars in different parts of Scotland. The process was not limited to the central belt. We held one seminar in Stirling, to capture the central Scotland dimension, but we also held seminars in the Borders, in Ayrshire, to capture issues in the south-west, in Inverurie and Aberdeen, to capture issues in the north-east, and in Inverness, to capture issues in the Highlands and Islands. In that series of regional seminars, we talked about what the national planning framework might be. We then had a second round of seminars, to feed back to colleagues what we thought would go into a national planning framework. We would like to continue with that approach, but we need to build on it. As you rightly pointed out, there will be national developments. We do not see the framework purely as a land-use planning document, so it is important that, as well as holding regional and thematic seminars with business, environmental groups, local authorities and others, we have the opportunity to engage much more locally, if there are specific developments that will impact on particular areas.

The intention is for us to go beyond what we did with national planning framework 1. Our stakeholders felt that we made a genuine effort to engage over that framework, but this time we will do so on the basis of a statutory requirement to draw up a national planning framework and a statutory duty to engage. There will be a consultative draft, which will allow people to say, "Why were we not consulted?" We will want to address any deficiencies in the consultation process before we finalise the document.

Mary Scanlon: It is helpful to know that the consultation will be more extensive in future. You said that the national planning framework should be a statutory document. Will flexibility be retained in case a major development is necessary, or will flexibility be reduced because the framework is cast in stone?

09:45

Jim Mackinnon: There are two elements to that. First, the intention is that if a development is identified as a national development in the national planning framework, the principle or need for it has been established by the Executive, following scrutiny by the Parliament. Therefore, any inquiry would focus on the environmental impact, the siting and the design. It will not be for the national planning framework to identify precise locations; that will remain for the local authorities to do.

Any statement in the national planning framework may well be seen as a material consideration in planning and will be taken into account by local authorities as they draw up their strategic and local development plans. In approving strategic development plans, ministers will have regard to the national planning framework. The strategy is not set in stone; it will be carried forward in detail with local authorities. Much as happens now, if local authorities can provide good reasons for shifting or adjusting developments, we would certainly take them into account.

Mary Scanlon: The framework is determined by the consultation period. The lifespan of the national planning framework could be up to 10 years.

Jim Mackinnon: The intention in the national planning framework is to look forward 20 years, because often the timescale for delivery of major projects is extensive. There are also powers in the bill to review the national planning framework.

Mary Scanlon: I turn to parliamentary scrutiny, about which I have never been totally clear. What is the reasoning behind the allocation of 40 days of parliamentary scrutiny? What is meant by the phrase

"have regard to any resolution or report of, or of any committee of, the Scottish Parliament"?

Further, paragraph 23 of the policy memorandum states that

"Parliament should be given a formal right to express its view, which Ministers would have to take into account."

I am not clear whether Parliament's input will be determined by committee reports, which a minister could take into account but ignore, or whether you expect it to be determined by all parliamentarians. I do not understand what is meant to happen. Will you spell out the process?

Tim Barraclough (Scottish Executive Development Department): The concept of the 40 days came from considering the ways in which statutory instruments are laid before Parliament. I do not think that it is necessarily the Executive's role to prescribe the procedures that Parliament will adopt in considering the framework. We expect that, once the national planning framework is laid before Parliament, Parliament will consider it in whatever way it wishes to do so and will prepare a report or resolution containing comments on the framework or suggestions for ways in which it might be improved. That information will be transmitted to Scottish ministers at the end of the 40-day period in whatever form

the Parliament considers appropriate, and Scottish ministers will have to consider it. When they lay the final version of the national planning framework, they will have to be clear about how they have taken into account the Parliament's comments and explain whether they have accepted them and why.

Mary Scanlon: Will the way in which the Parliament considers the national planning framework be delegated to the Parliament? In other words, will the Parliament decide how that should be done, such as through a debate in Parliament or through the committees?

Tim Barraclough: The bill makes no extra provision for any particular procedure other than that the framework be laid before Parliament.

Mary Scanlon: Therefore, the Minister for Parliamentary Business or the Presiding Officer would determine how the Parliament would consider the framework.

Tim Barraclough: I presume so.

Patrick Harvie (Glasgow) (Green): Parliament will clearly have the right to decide its own processes and procedures in that regard, and the bill must allow sufficient time for that. Can you confirm whether my reading of the bill is correct, in that the 40-day period for consideration does not refer to 40 sitting days, and that it could include a recess?

Tim Barraclough: I am not sure that that is right.

Patrick Harvie: The wording to which I refer reads:

"in reckoning that period no account is to be taken of any time during which the Scottish Parliament … is in recess".

Tim Barraclough: Yes. The bill says:

"no account is to be taken of any time during which the Scottish Parliament—

(a) is dissolved, or

(b) is in recess for more than 4 days."

Patrick Harvie: In which case—

Tim Barraclough: That time does not count towards the 40 days.

Christine Grahame (South of Scotland) (SNP): That is what it means.

Patrick Harvie: So the 40 days can include recess.

Members: No.

Patrick Harvie: It cannot include recess. Okay.

The period of 40 days is rather less time than it takes us to consider other substantial documents. We are not talking about a regulation or a minor piece of secondary legislation here; we are talking about a substantial document that will have a major impact on people's lives. Did the Executive consider a longer period?

Lynda Towers (Scottish Executive Legal and Parliamentary Services): The provision was the subject of discussion between the office of the Minister for Parliamentary Business and the parliamentary authorities. The period that has been specified is similar to the period that applies to the affirmative procedure for orders. The matter was considered taking that into account.

Patrick Harvie: The committee will perhaps need to discuss whether we feel that that period is substantial enough.

On public scrutiny, there is a consultation period, and the Executive has been discussing consultation and so on. Was there discussion of a more structured process of public scrutiny, in the same way as other spatial plans are put out for examination in public before being signed off?

Jim Mackinnon: Yes, we considered that. The examples that people have raised with us include the regional spatial strategies for some of the English regions, the greater London strategy and the Northern Ireland regional development strategy. We thought about those options. The national planning framework for Scotland will be a different document, however, and it will not allocate land for housing. We are not saying, for instance, that development should take place to the south or east of Glasgow, or that it should take place in Haddington instead of North Berwick. The framework for Scotland will not be that sort of document; it will articulate a strategy to be taken into account by local authorities in their strategic and local development plans, and will outline priorities for infrastructure investment to support that strategy.

Just as examples from Northern Ireland or the English regions may be referred to, examples from southern Ireland and parts of continental Europe, including the Netherlands, Denmark and elsewhere in Scandinavia, may be cited. What is happening in those countries is analogous to the process that we are putting in place. Arguably, the national planning framework for Scotland will be closer in its philosophy to national spatial strategies for countries such as the Netherlands and Denmark than to a regional spatial strategy for, say, the north-east of England or greater London.

Patrick Harvie: On the final part of the process, I think that we will probably want to ask about the possibility of holding an examination in public. The Northern Ireland and London spatial strategies are subject to such a process, following which the mayor will sign off the London spatial strategy and

the Northern Ireland Assembly will vote to approve the strategy for Northern Ireland. The Scottish Executive is not the mayor of Scotland; here, devolution is to the Parliament. Was consideration given to the question whether the framework should be formally signed off by the Parliament, rather than by Scottish ministers?

Jim Mackinnon: We considered a number of options, but we wanted to do something that related to the specific circumstances of Scotland. In Northern Ireland, as you might be aware, local authorities do not have any planning powers. Those powers are exercised by central Government, at both the strategic and local levels, including decisions on planning applications. We considered different circumstances in different areas and our conclusion was that this approach was particularly appropriate in Scotland. As you say, it is a matter on which you might like to take further evidence and that you might like to pursue with the Minister for Communities in due course.

Christine Grahame: I have two supplementaries. In the criteria for the national planning framework, you refer to waste management. Would that include nuclear waste?

Jim Mackinnon: No. Ministers have made clear their position that, until issues surrounding the disposal of nuclear waste are resolved, it would not be appropriate for anything to feature in the national planning framework.

Christine Grahame: But would a nuclear waste management development, in principle, be a national development? If the issues surrounding the disposal of nuclear waste were all resolved, would such a facility be a national development?

Jim Mackinnon: Ultimately, it would be for ministers to decide what would go into the national planning framework.

Christine Grahame: But would nuclear waste disposal go into the framework, if all the issues were resolved?

Jim Mackinnon: Ultimately, it would be for ministers to decide what would and what would not go into the national planning framework as a national development.

Christine Grahame: Right. My second question concerns cross-border issues, such those to do with motorways. How will the national planning framework deal with those?

Jim Mackinnon: When you talk about cross-border issues, do you mean the border with England?

Christine Grahame: Yes.

Jim Mackinnon: The term also applies to Ireland, because shipping connections are important.

Christine Grahame: How will such matters be dealt with?

Jim Mackinnon: When we drew up the first national planning framework, we had a number of discussions with the Government offices for the north-east and north-west of England. We want to continue to have such discussions, because there are issues on which there might be a need for a cross-border approach. However, there are probably fewer such issues in Scotland than in Wales. For example, people who live in Wales might use health services in England. That is not the case with people who live in Scotland, although it probably happens a wee bit in the south-west around Dumfries and Carlisle. However, there are issues around transport on the east and west coasts, for example, on which there might be benefits to having shared agendas with regions in England.

Christine Grahame: Forgive my ignorance, but is a parallel national planning framework being introduced in England?

Jim Mackinnon: No, and there are no plans for a similar document in England. As Mary Scanlon and Patrick Harvie mentioned, there are regional spatial strategies south of the border.

Christine Grahame: So there is a spatial strategy for the north-east and so on.

Jim Mackinnon: There is one for the north-east and one for the north-west, for example, but there is nothing for England as a whole. There are documents for Wales, Ireland and Northern Ireland, but they are all subtly different.

Mr John Home Robertson (East Lothian) (Lab): I will come back briefly to parliamentary consideration of the framework, because the bill uses terminology that I have not seen before. Mr Barraclough made cross-reference to the affirmative procedure. Is that what we are talking about, de facto? Will the framework be considered as an affirmative instrument?

Tim Barraclough: I do not think that it is exactly analogous to that.

Mr Home Robertson: What is it, then?

Lynda Towers: It is the period that is analogous. Affirmative instruments tend to be the more complicated statutory instruments.

Mr Home Robertson: So the framework will be considered under a resolution of the Parliament that will be subject to amendment.

Lynda Towers: It will be for the Parliament to decide how it wishes to deal with consideration of the framework.

Patrick Harvie: I think that other members will ask most of the questions about part 2 of the bill, which concerns development plans, but I will ask about the sections that refer to sustainable development. We see that planning authorities must exercise their functions

"with the objective of contributing to sustainable development."

How will that be defined for the purposes of the bill?

Tim Barraclough: Sustainable development is a broad concept that has its expression in many different forms. The clear expectation is that local authorities, in preparing their development plans, will have regard to the relevant documents on sustainable development—notably the Scottish Executive's sustainable development strategy. We will also prepare further guidance for local authorities, setting out how we expect them to perform that duty in preparing their development plans. Therefore, the broad context will be the sustainable development strategy, beyond which we will give local authorities further guidance on what that will mean in practice when they prepare their development plans.

10:00

Patrick Harvie: Does that mean that local authorities will have to carry out their function in a way that is consistent with the strategy?

Tim Barraclough: That is right. The strategy sets out the Executive's view on what sustainable development means for Scotland. It is a prime document to help local authorities to approach the preparation of development plans.

Patrick Harvie: I am sure that some of these issues will come up later today when we debate the strategy in the chamber, but I want to ask about monitoring assessment. Several chapters in the sustainable development strategy acknowledge the role of the planning system. However, we need to be clear about how we will monitor the work that local authorities are doing to find out whether they are making their decisions and carrying out their functions in a way that is consistent with the Executive's approach to sustainable development. How will that monitoring take place?

Tim Barraclough: Principally, that will happen through the preparation of development plans, which will be subject to the appropriate scrutiny. A strategic environmental assessment will also be required for every development plan, which will raise the environmental issues associated with those plans.

Local authorities will be required to prepare action programmes alongside their development plans setting out how they intend to carry out the implementation of the plans. Again, that will have to be considered in the light of local authorities' duty to contribute to sustainable development.

Patrick Harvie: So if a local authority carries out its functions in an unsustainable way, the main mechanism open to the Executive would be for it not to back the development plan.

Tim Barraclough: The Executive has different rules for development plans. Perhaps Jim Mackinnon can speak about the approval mechanisms.

Jim Mackinnon: The Scottish ministers will continue to approve strategic development plans. That will be very important and will follow an examination in public.

Our powers in relation to local development plans are reserved, but there is provision for public examination, which could involve written submissions, a hearing or, when objections are made and not withdrawn, an inquiry.

The important point about development plans in relation to sustainable development is that they look at the development of an area as a whole, which is very much what sustainable development is about. They also look to the longer term, which is another key feature of sustainable development. It is not about short-term, incremental decision making.

We propose to introduce additional provisions for enhanced scrutiny of developments that are contrary to the local plan. There is also a requirement to keep local development plans and strategic development plans up to date within five years. The concept of sustainable development will be kept alive. This is not just a snapshot because through the approval mechanisms, the keeping of plans up to date and the scrutiny of contrary proposals, we can get an understanding of the way in which the development plan system is contributing to sustainable development.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): We are all aware of the primary objectives and aims of the bill, which are to modernise the planning system and, importantly, to involve people more. How will people be encouraged to be more involved and how will the consultation and involvement process involve other organisations and interests in the local plans and—I have to get used to the new names—the local development plans?

Jim Mackinnon: The key changes include the requirement that is to be placed on strategic

development planning authorities and local development planning authorities to draw up a programme that will be known as a development plan scheme, which will indicate the programme for plan preparation in the authority's area. That will have to be updated annually; people should be aware of the programme for plan preparation. A key part of the document will be a consultation statement that will set out the ways in which the planning authorities intend to engage not just with local communities, but with other stakeholders, when drawing up the development plan. That is very important.

We are also proposing the introduction of an issues report. We do not want that report to pose questions to which there are no answers. It will build on the existing plan for the area and ask questions about what issues the plan should address and how. That is a significant change.

We are introducing a requirement for local development plans to inform or notify owners and neighbours around developments if there is to be a significant change. I have already mentioned that there will be an inquiry into cases in which objections are not withdrawn. In such situations, the reporter will, before the inquiry starts, assess the quality of engagement. It is not just about objections from A and B—it is also about whether the planning authority has made reasonable endeavours to do what it said it would do in the consultation statement. On the back of that, if the reporter does not feel that the planning authority has done enough, they can ask it to do more. The first issue is for the inquiry to consider whether the planning authority has engaged meaningfully with its stakeholders, which is quite a big task.

On development management and the processing of planning applications, we are introducing a statutory duty to have pre-application consultation in defined circumstances; for example, if the application is a major proposal, if it is significantly contrary to the development plan, if it is an environmental assessment case or if it is a bad-neighbour development. There will be opportunities for communities to get involved early in the process.

We are also introducing a requirement that hearings be held so that people have an opportunity to make their case to the planning committee and it is taken into account. If the development is contrary to the local development plan—not just the structure plan, as is the case now—and there is a significant body of objection, the application will be referred to the Scottish ministers.

I have described the processy stuff, but many of the requirements for improved engagement with stakeholders relate to practice and culture, which is why we have given a commitment to draw up a planning advice note on best practice in development planning and in development management. The thrust of the reforms is for earlier and more meaningful engagement and to demonstrate that views have been taken into account. The planning advice note will be the subject of consultation, which we do not normally do for planning advice notes. However, we attach very high importance to that work so that we can ensure that good practice is well understood. There is a great deal of good practice in many councils throughout Scotland. After we consult on the draft planning advice note on community engagement, we intend to publish it to coincide with the passage of the bill.

Cathie Craigie: What is the timeframe for the consultation and publication of the draft planning advice note?

Jim Mackinnon: Normally, we would allow three months for a consultation. I would like to think that the draft planning advice note will be issued in late spring. The document will be adjusted in the light of comments that will be received during consultation. We have already set up a stakeholder group so that we can get informed comment on the note. The document will not be generated just by the Executive—we will work on it with our stakeholders.

We will also be involved in a major conference on inclusion at the end of next month, just to see what we can do in respect of things that may be appropriate in terms of practice and culture, rather than formal legal processes.

Cathie Craigie: Does the stakeholder group involve professionals and members of the public?

Jim Mackinnon: Yes—it is not restricted to professional planners. It will include people who represent a range of community and environmental interests.

Cathie Craigie: I understand that when the inquiry reporters unit believes that a local authority has not properly involved the public in preparing a plan, it is to be able to ask that council to revisit the matter. What powers will the unit have when a council does not appear to be involving the public fully in its plans?

Jim Mackinnon: Essentially, the power will be for the inquiry reporter to return the plan to the planning authority—which could be a council or a national park authority—and to tell it that it needs to do better. The reporter could point out that the authority said in its consultation statement that it would do something that it has not done. They could also say that the authority will have to go back and do more in the way of engagement before the reporter considers the formal objections to the plan. I expect that that would not simply be a general exhortation to do more in the way of

engagement; the reporter would have to be specific about what they expect the authority to do. The plan would not be able to proceed to the inquiry and then to adoption until such time as the reporter was satisfied that the planning authority had taken sufficient steps to engage meaningfully with all stakeholders.

Cathie Craigie: I welcome the bill, but from reading it and hearing what you say, it seems as if the process could be lengthy, and one of the criticisms of the planning system that we have heard from local communities and business communities has been the length of time that it takes. What timeframes will be put in place to speed up the process and ensure that we are not bogged down by different organisations and people re-examining an application?

Jim Mackinnon: Do you mean just the inquiry process or development planning in general?

Cathie Craigie: If local people feel that they have not been involved in the process, we have to bring somebody in to examine it. That takes time. Does the Executive intend to put a time limit on the time that local authorities have in which to reach agreement with their local communities?

Jim Mackinnon: The starting point is that, for the first time, there will be a statutory duty to keep local plans up to date. That is a hugely significant change.

It is difficult for us to prescribe how long a plan will take. The development planning scheme will require a local authority to set out how it will approach coverage of its area with the local plan. Many councils, particularly the smaller ones, will opt for a single plan, whereas larger councils, such as Highland Council, will wish to have a number of plans to cover their area because of its sheer size. It is not for the Executive to prescribe in any detail how that should be done.

We could say that, for a smaller area, there might be fewer objections, but that does not necessarily follow. In the north-east, we have the Aberdeen city and Aberdeenshire local plans, which have generated many thousands of objections. It is difficult to generalise on the matter, given that authorities in Scotland vary so much in character and composition and also because of the nature of the issues that the local plan might address. For example, if a local plan makes specific proposals for an integrated waste management site or specific proposals on minerals, they will clearly be controversial proposals.

We have said that planning authorities should have schemes for drawing up development plans. They need to manage the process more carefully than they do at the moment. It is not a case of starting forth and doing a development plan; authorities need to have a much more programmed approach. There are signs that that is happening throughout Scotland already—for example, Western Isles Council recently drew up a local plan within 12 months from start to deposit.

Once an authority draws up a plan, it becomes a bit uncertain, because we do not know how many objections will be made, but we have proposals that should make the inquiry process much shorter and less adversarial. The detail of that will be for the individual reporters to handle, although there will be regulations on setting that out. The intention is that no one will have the right to a public inquiry per se; the reporter might be confident that the case could be dealt with by written submissions, an informal hearing or, in some cases, an inquiry. That should speed up the process.

There is a lot in the bill and in the approach that we want to adopt that should ensure that development plans are prepared more quickly and are kept up to date. There are, of course, advantages to the planning authority in adopting that approach in relation to promoting their own developments and to appeals. Those advantages will act as powerful incentives.

Cathie Craigie: You rightly point out the requirement for planning authorities to keep local plans under review. That requirement is to be welcomed. Will the same level of public involvement be expected in the review process?

10:15

Jim Mackinnon: Absolutely. That is the whole purpose of the consultation statement attached to the development plan scheme. The planning authority will be setting out in advance how it intends to approach consultation. There might well be a local plan in an area where there is very little pressure for development, and the update there might be a fairly small-scale affair. Public involvement and engagement might be tailored to suit. Clearly, however, if the intention is to roll forward in a significant way issues relating to land supply, to major regeneration schemes or to controversial proposals surrounding developments that would have a very large environmental impact, our expectation would be for the process of public engagement to be tailored to suit that.

Cathie Craigie: My colleague, Christine Grahame, has a point to make on that.

Christine Grahame: I have a couple of supplementaries. I want to ask about the planning advice note—there seems to be an awful lot of important stuff in there. When will it appear in draft form for consultation, considering the timetable for the bill?

Jim Mackinnon: The intention is that the draft planning advice note should come out late in the spring. I guess that that should be around the time when stage 1 concludes, as I understand the timetable for the bill.

Christine Grahame: It is useful for the committee to know that. My second point was on what the role will be for other agencies, such as the Scottish Environment Protection Agency, Scottish Water and other utility companies that are involved in the planning process. To put it in colloquial terms, how much clout will those bodies have? We can see the difficulties that arise with housing developments for which Scottish Water might not be able to provide infrastructure.

Jim Mackinnon: That is an important point. We have recognised that the planning reform is not just for the planning authorities to deliver. There are key agencies involved, which are critical to making the plans work. We propose that, under the bill, key agencies will be designated on which there will be a duty to co-operate. Christine Grahame mentioned SEPA and Scottish Water which, with Scottish Natural Heritage, are very important in this matter. The key point about development plans is that certainty must be provided for investors and communities. Public trust in planning will be eroded if, despite there being an up-to-date development plan, it is found that the site cannot be serviced, whether because of access or for reasons to do with water and drainage. That could result in planning applications being made for adjacent sites that are not covered in the development plan.

We propose a statutory duty for those agencies to co-operate in the strategic and local development plan process. We also require action programmes to be drawn up following preparation of the plans. It is really about how the plans are implemented. That is critical, and it will involve close work with the key agencies.

Christine Grahame: Before the local development plan can be accepted or passed—whatever the language is—will the local authority have to certify, or demonstrate evidentially, that it has consulted and obtained the agreement of those agencies for the plan? I am speaking about verification. How will things be checked?

Jim Mackinnon: I do no think that there is specific provision for verification. However, the duty will certainly be placed squarely on key agencies to co-operate on the preparation of the development plan.

Christine Grahame: I thought that the duty was on the local authority.

Jim Mackinnon: The duty will be on the agency.

Christine Grahame: So, no duty will be imposed on local authorities to ensure that there is consultation and that what is said is taken on board.

Jim Mackinnon: It is important to recognise that there will often be mixed messages from the agencies, and that a development site that might make sense with regard to water and drainage could be unsustainable in transport terms because of its remoteness. It might also be quite a difficult site because of the landscape setting or the presence of a green belt. A balancing act is required. Our impression is that—[*Interruption.*] I am sorry: I have just been passed a note. Would you like to address this point, Michaela?

Michaela Sullivan (Scottish Executive Development Department): The planning authority's responsibility lies in its requirement to consult the key agencies that are defined. The key agencies will become statutory consultees. The obligation rests on both sides: it rests on the planning authority to consult, and on the agency to respond, as a statutory consultee.

Christine Grahame: If the local authority does not discharge that duty—although it does not have to accept the responses that it gets—what happens? How will it be certified that the local authority has consulted the utilities? If it does not consult the statutory agencies, what is the remedy?

Jim Mackinnon: Evidence from planning authorities suggests that they consult agencies widely, so it is not that the local authorities have not consulted in the past. The difficulty seems to be that some agencies have not submitted observations.

Christine Grahame: The agencies have not responded.

Jim Mackinnon: No, so there will be a duty on them to co-operate.

Christine Grahame: In that case, it is a mutual duty, so what will be the remedy if an agency does not respond? There should be remedies if statutory obligations are not met—if the local authority has asked a statutory agency for a response but does not get one.

Michaela Sullivan: That would be dealt with at the examination. Ultimately if, for example, Scottish Water is consulted but it does not respond and does not turn up at the examination, the reporter will have to make a decision based on the fact that information has not been received. However, if statutory bodies are obliged to co-operate, the hope is that the change in culture that we want will happen and that our attempts to move the planning system towards dealing with things at the development plan stage will succeed.

However, that will require some organisations to change their culture.

Christine Grahame: That may be a matter to explore. If a duty is not met and there is no remedy, something such as an order should be introduced to require agencies to respond.

Jim Mackinnon: Such a situation is unlikely in practice, but Christine Grahame is absolutely right to ask what will happen when bodies do not engage. It is a fair question and we will reflect on it.

The Convener: Cathie Craigie had more questions on development plans. However, I will ask first about public consultation, which has not been covered. The Executive is working to ensure that best practice is followed throughout Scotland. As well as working on how to engage with communities initially, will you also work on sustaining that engagement? Development plans will have to be updated continually. A local authority may engage effectively with its communities when initially it produces its development plan, but some of the plan may not have been implemented three or four years later, so how will the authority keep the people with whom it initially engaged interested? They might be interested at the beginning of a process, but their interest may have waned slightly 10 or 15 years later.

Jim Mackinnon: That is a fair point. There have been concerns that, despite the pressure for greater inclusion and involvement in the planning process, there are signs of consultation fatigue. We are trying to understand better the importance of the development plan. It might exist to change communities or to conserve a townscape or the setting of a community—that is perfectly okay. It will be a very important document. I said that the development plan will be updated annually, but if there is no provision to update the plan in the next year, there will be no engagement with communities. We are trying to slim down the plan, which is important if communities are to be clearer about the changes. A slim document is better than a thick one that people have to wade through in that it will be easier for them to see the key parts that will affect their areas. We need to avoid a scatter-gun approach because some issues may have no general relevance to an area but specific aspects might resonate with a specific community. In that case, there should be a more targeted approach.

The thrust of the reforms is about earlier engagement, but they are also about getting planning authorities to think about how they will engage and with whom they will engage. The approach should not be, "We need to consult on the plan." Rather, it should be, "We are drawing up a plan. We need to engage early and we must think about how we engage and the format in which we engage. Can we use newspapers and the web effectively?" We want to get into that position.

Cathie Craigie: The bill will place a duty on local authorities to publish and prepare action plans. That sounds like a reasonable step. What will the plans include? How will they be prepared?

Jim Mackinnon: The idea behind the action plan is that we want to get away from the notion that the plan is an end in itself. People sometimes tend to think, "We've got the report out. Phew! Now we can relax." The plan is a means to an end. It takes a long-term view, but short-term actions will also be required to deliver on specific land allocations. Those may come from the private sector, but they might also involve key agencies, such as the trunk road management people in the Scottish Executive, the new Transport Scotland or people who are responsible for water and drainage, which Christine Grahame mentioned. What will happen to make those land allocations a reality?

There are also statements in development plans such as, "We will draw up a strategy for conservation area management or for a country park." It is not just about development; it is about how the policies and proposals in the plan will be taken forward in the short term, which is not only an issue for the planning authority, but for the key agencies that we have talked about and—in some cases—local communities, who might also want to be involved. The idea is that the plans will be updated every two years. Essentially, we seek to have the plans operationalised and to get away from the idea that that is the plan, which will be reviewed in five years. The plan should be a living document in which people can see the changes that will take place.

Cathie Craigie: The bill makes provision for the planning authorities to produce statutory guidance to supplement the local development plan. What is the guidance likely to contain?

Jim Mackinnon: Currently, many development plans are very thick and contain lots of detail. The thickness of the document often gets in the way of understanding, so we want to slim down the plans so that they do not contain too much detail. The supplementary guidance might take the format of, for example, a development brief for a site. It might be a development brief for the regeneration of Cumbernauld town centre or it could be an allocation for development or it could be that we will draw up guidance that will influence the way that decisions are taken on planning applications in conservation areas. We are trying to get the plan slimmed down so that there can be more focused guidance and better targeted consultation. That will make the status of the supplementary

guidance clear. Michaela Sullivan might want to comment on that.

Michaela Sullivan: I think that Jim Mackinnon probably answered the question. The guidance is a way of setting out the detail. For example, as Jim said, there could be a development brief in which it could be stated where landscaped and play areas will be and where the houses and employment land and so on should be within an urban expansion site or other such area. That will let people think more about the detail without including all the detail in the development plan, thereby making it an unwieldy document.

Cathie Craigie: How will the public be involved in that process?

Michaela Sullivan: All supplementary guidance that has any status in the planning system is subject to public consultation. It is anticipated that if supplementary guidance is prepared for an urban expansion area, the local residents, the community council and so on would be involved in the preparation of the document and would have an opportunity to comment on it—as would the landowners, the developers and other relevant bodies. Therefore, there would be consensus that the supplementary guidance that is prepared and adopted represents the way that the development should proceed.

Jim Mackinnon: When authorities draw up supplementary guidance, they will refer it to Scottish ministers. If Scottish ministers feel that the authorities have not done enough by way of consultation they can say that the authorities cannot adopt it as supplementary guidance. There is a check and balance in the system. Specific provision is made for that in the bill.

10:30

Cathie Craigie: Would the guidance be published at the same time as the development plan or some time after it?

Michaela Sullivan: The development plan might have an enabling statement saying that supplementary guidance will be prepared. Quite often, guidance will be prepared on a rolling programme as a plan unfolds. If, for example, a development plan takes a 10-year view of housing allocations, the developments may be phased and the development plan might say that, before development X proceeds, supplementary guidance will be prepared. As the first phase of allocations is built out, the planning authority will start to prepare the supplementary guidance. I would not expect all the supplementary guidance pertaining to a particular plan to be available at the starting point, but I would expect the plan to refer to the fact that the guidance will be prepared prior to a development commencing.

Mr Home Robertson: You will be aware that some areas have a particular problem with securing land for affordable rented housing. It would be helpful if you could indicate whether, in the provisions for the proposed development plans or the supplementary guidance associated with them, there is scope for local authorities to designate areas of land or sites within areas of land for affordable rented housing or other relevant purposes.

Michaela Sullivan: Under planning advice note 74, on affordable housing, which was published in March last year, planning authorities have the right to allocate sites for affordable housing within their development plans. They also have the right to produce statements in their development plans setting out the percentages of sites that should be designated for affordable housing. There are a number of examples of strategies. Fife Council has recently prepared one and is setting out in its draft structure plan the proposed percentages of affordable housing on different sites. There is provision within existing planning legislation for sites to be made available for affordable housing through the development plan process, and we expect that that will continue.

Mr Home Robertson: Will that come under the development plans that are proposed in the bill?

Michaela Sullivan: It will. As all new development plans are drawn up, local authorities will have the power to allocate land specifically for affordable housing or to designate for affordable housing percentages of sites that they allocate for market housing in their development plans.

Euan Robson (Roxburgh and Berwickshire) (LD): I will ask about the determination of boundaries for the strategic development plan area. As I understand it, under proposed new section 5(3) of the principal act, the Scottish ministers can accept the planning authorities' version of the boundaries, modify it or choose other boundaries. In choosing other boundaries, they might accept what we might describe as a minority report. Is that a fair understanding of how the boundaries will be determined?

Jim Mackinnon: There are 17 structural plan areas in Scotland at the moment. That will reduce to four areas in which there will be an upper-tier plan, which are essentially the four largest city regions. Through secondary legislation, the authorities that have to participate in those strategic development plans will be identified and designated. They will then work together to determine the boundary of the strategic development plan area. In the Borders, for example, the authorities might collectively feel that they should draw the line at Peebles and Kelso but possibly exclude Hawick, but that is a decision that they would have to come to themselves.

The power in proposed new section 5(3) is essentially a reserve power that ministers want, because our feeling so far is that local authorities are likely to be able to agree those boundaries. That is certainly what we would prefer, but we would listen to the arguments for and against a particular boundary—for example, on whether the strategic plan area in the north-east should cover the entirety of Aberdeen and Aberdeenshire or just the Aberdeen travel-to-work area. The power is a reserve or fallback power in case there are difficulties in agreeing the precise boundary.

Euan Robson: If I read proposed new section 5 correctly, if ministers decide on a boundary that is neither that which the authority has suggested nor the minority proposal, although the proposal of the authority and the minority proposal require a statement to justify the proposed boundaries, there is no requirement for ministers to justify their decision, despite the fact that they might choose a boundary that is completely different from anything that has been submitted. Further, under subsection (5), their determination will be "final and conclusive". The Executive should reflect on the suggestion that if the ministers will be able to choose a boundary that is completely different from the proposals that have been submitted, it would be wise to make a statement of justification a statutory requirement.

Jim Mackinnon: I am happy to reflect on the suggestion that ministers should give reasons for their choice of boundary.

Euan Robson: Circumstances must have been envisaged in which ministers will simply set aside the plans that the constituent authorities submit. What is the rationale behind the power for ministers to set aside what has been submitted?

Jim Mackinnon: The reason relates partly to the point that Christine Grahame made about what would happen if key agencies do not engage. Our expectation is that agreement will be reached, although some peel-off may occur if one authority wants a different part of its area to be included. The power is a what-if or just-in-case provision—that is the basis on which it was drafted. However, I take the point that we should reflect on whether justification should be given for any such decision by ministers.

Mary Scanlon: I have a question on development plans. Will the extensive consultation process apply to mobile phone masts, pylons and wind farms?

Jim Mackinnon: Do you mean in relation to development planning?

Mary Scanlon: Yes.

Jim Mackinnon: If policies on wind farms or renewable energy developments are to be included in a development plan, the expectation is that people with an interest in them would be involved, which means possible providers of the infrastructure and the local communities where there are proposals that wind farms be installed. Many planning authorities do not at present identify locations for wind farms, although some have moved in that direction. Clackmannanshire Council and Stirling Council recently started to do that and Highland Council is moving in that direction, but many authorities simply identify general criteria that will be applied to the determination of applications for wind farms. Many such applications, and certainly the larger ones, are not determined by the planning authorities—they have a statutory duty to get involved in the process, but the Scottish ministers make the decision. However, if the planning authority objects, there is a statutory duty to hold an inquiry.

Mary Scanlon: Obviously, proposals that fall under section 36 of the Electricity Act 1989 go to the Scottish ministers, but if Highland Council designates areas of land, as it has done, that too can be overruled by the ministers. Do you expect that the designation of land for mobile phone masts, pylons and wind farms, and therefore the consultation process, will be part of the development plans?

Jim Mackinnon: I make it clear that the Scottish ministers will have reserve powers in relation to local development plans, so it is unlikely that they will approve formal development plans for Highland Council, which will be master of its domain, as it were. The council may well decide to have location-specific policies on wind farms, although the expectation is that it would not do that for radio or telecommunication masts, as there will be so many of those and the issues are localised. I do not expect to see those matters in local development plans but, certainly for Highland Council, I expect the development plan to identify areas where there is to be a presumption against or in favour of wind farm development.

Mary Scanlon: You are saying that you expect development plans throughout Scotland—this is not just a Highland issue—to show land that is designated as having a presumption in favour of or against wind farms so that local communities can have their say.

Jim Mackinnon: That is essentially what the current Scottish planning policy on renewable energy says, but we are moving to review the policy. We intend to issue that in spring. There will be a significant amount of consultation on that because there is pressure on the Executive to provide a locational framework as opposed to a criteria-based policy. I am not yet in a position to say how the review will pan out. It will also be informed by the views of consultees before it is

finalised. I include the Communities Committee in the definition of consultees because it is now taking an active interest in many of our Scottish planning policies.

Mary Scanlon: Thank you. That is helpful.

I have some questions to ask about development management. Could you explain the rationale behind the extension of planning control to cover internal changes in buildings in limited circumstances?

Michaela Sullivan: At the moment, where a consent is given for retail development, it will be subject to a retail assessment that considers the impact of the additional floor space, the amount of car parking that will be needed to service the store, and so on. However, unless a planning consent that has been granted in the past specifically excludes the installation of mezzanine flooring, that retail unit can be doubled in size without any recourse to planning. An assessment might have been made that that retail unit or park would have a perfectly acceptable impact on the local area and would have enough parking spaces, but if the entire development is in effect doubled in size, it might well have a completely different impact and not have enough parking spaces. As the planning system has no means of controlling that at the moment, the installation of mezzanine floors is being brought under control, so that an application would have to be submitted in order to install one.

Mary Scanlon: That is helpful.

My second question is on the extension of planning control to marine development. You will forgive me if I use the islands as an example again.

Paragraph 87 of the policy memorandum mentions the Zetland County Council Act 1974, which currently gives Shetland Islands Council powers to grant works licences in territorial waters. I understand that that act was brought in because of Sullom Voe. However, I note that the policy memorandum says:

"Extending planning controls to the 12 mile limit would do away with a dual control regime which would otherwise exist and deliver one mechanism of control throughout Scottish territorial waters."

Do the provisions in the Planning etc (Scotland) Bill overrule the existing provisions of the Zetland County Council Act 1974? How will the bill impact on udal law, which applies to Orkney and Shetland, where householders, croft owners and landowners own their land down to the low water mark, unlike anywhere else in the rest of Scotland?

Tim Barraclough: Yes. It is intended that the extension of planning controls to marine fish farms will replace the requirement for works licences under the Zetland County Council Act 1974.

Mary Scanlon: The bill will overrule the Zetland County Council Act 1974.

Tim Barraclough: It will replace it.

Mary Scanlon: It will repeal it.

Tim Barraclough: Yes.

We will have to take advice about your second question. I am not an expert on udal law—I am not sure that any of my colleagues is either. We can take the point away and consider it.

Mary Scanlon: I would be grateful if you did because people in Orkney feel very strongly about the rights that they had under the ancient Norse regime and they are very well acquainted with all their rights. There would be quite an outcry if you were to take away their rights over their land. Could you get back to the committee on that?

Tim Barraclough: We certainly can. The proposals have been extensively consulted on in all interested areas.

10:45

Mary Scanlon: Have landowners in Orkney and Shetland who are affected by udal law been consulted on the proposals?

Tim Barraclough: The proposals have certainly been consulted on in Orkney and Shetland, but I do not know whether the issue of udal law was raised in the consultation. I am happy to come back to the committee on that point.

Mary Scanlon: I would be grateful for that.

The Convener: On a point of clarification, the schedule to the bill has no mention of the fact that that piece of legislation is to be repealed. Is that just an oversight or is it something that you can clarify?

Lynda Towers: We would have to clarify how the objective will be achieved technically, but the essence is that there will be one regime relating to marine fish farming. If that means that the licensing arrangements in the Zetland County Council Act 1974 have to be amended, that will have to be looked at. However, one regime will cover the licensing of marine fish farming and bring it all within the planning regime.

The Convener: It is not in the bill, so it is something that will obviously need to be considered.

Lynda Towers: Yes.

Mary Scanlon: Given that Orkney and Shetland people feel strongly about their udal rights, if you are taking away those rights and, in effect, taking

away their ability to decide what to do on their own land down to the low water mark, will you consider some form of compensation for them?

Lynda Towers: I, too, am not an expert on udal law. My understanding is that what is proposed is, in effect, a regulation and not a measure that takes away the right to use. There is a difference in law in that context, so it would not be a question of taking away people's udal law rights. I also understand that, in that context, the majority of the marine fish farming regulations will apply beyond the low water limits. We can certainly come back to you on the matter, but I do not think that there is any suggestion that people's udal law rights, such as they may be, are being taken away by the provision.

Mary Scanlon: I appreciate that the fish farms will be beyond the beach—I also appreciate that fish swim in water and not on sand. Nonetheless, the fish have to be landed and they could not be landed on land that belongs to someone else—that is, the person who owns the foreshore. That is the point.

Lynda Towers: Yes. I appreciate that point, but it is a question of the use of the land rather than of preventing somebody from doing something. It is a question of licensing—it is the same kind of system as for owners of land, who have to have planning permission.

Mary Scanlon: Thank you, but I am sure that we will come back to this one.

Mr Home Robertson: I suspect that the main rights that we are encroaching on here are those of the Crown Estate commissioners, which is good news. In the past, we have always been told that for developments on the sea bed and the foreshore, the planning authority was, in effect, the Crown Estate commissioners. Am I right in understanding that we are moving on from that and that the Scottish Executive and local authorities are taking on that authority?

Tim Barraclough: Yes.

Mr Home Robertson: That is good news indeed—well done.

Scott Barrie (Dunfermline West) (Lab): I want to ask about the hierarchy of developments. What is the rationale behind the creation of a three-tier system for national, major and local developments?

Jim Mackinnon: We have a once-in-a-generation opportunity to reform the planning system, which has evolved over the years—certainly since the late 1940s. There was a feeling that many developments were going through the planning system in an undifferentiated way. We felt that we had to look at developments differently according to their importance and complexity. I have already set out how we intend to deal with national developments in the national planning framework. Below that will be major applications. The figures that we got from local authorities demonstrate that those developments, which are important for Scotland in terms of homes, jobs, schools and investment in environmental and waste management facilities, are taking longer to go through the planning system than they should. There must be a much stronger focus on that. We will have to define in secondary legislation what constitutes a major application. Such applications will be subject to a form of processing agreement that will ensure that the process is not only inclusive but efficient.

Leaping beyond local developments to minor developments, I note that we are carrying out a major review of permitted developments, which are very small-scale developments. We have been asked whether minor adevelopments should require planning permission, given that they are sometimes adequately catered for under other consent regimes. We are taking an in-depth look at that. In the first instance, consultants have been appointed to consider householder developments, but they will also consider other forms of development.

We imagine that a significant number of developments will fall out of the planning system and will not require specific control. However, we recognise that there will be pressure to bring other types of development within planning control. Mary Scanlon mentioned telecommunication masts and I imagine that there will be pressure to strengthen controls over those. There is also strong interest in controls over forestry tracks and hill tracks for forestry and agriculture.

There are national developments, major developments, local developments and minor developments. The rationale behind trying to disaggregate what goes through the planning system is to ensure that the processes that apply to developments are proportionate and that they reflect the significance of applications.

Scott Barrie: I fully understand that, but the devil will be in the detail. I foresee difficulties with determining what falls into each of those categories. Ministers will determine that by regulation, but there will be a tension between local developments and major developments. What is a large-scale development and what is a minor development? How will we tease that out? What do you regard as a major development as opposed to a local development?

Jim Mackinnon: Michaela Sullivan will expand on what will constitute a major development.

Michaela Sullivan: We intend to set obvious thresholds so that it is clear whether a

development is a major development. It is important that there is no grey territory, so there will be cut-off points. A development will fall either above or below the cut-off point and will therefore be deemed either major or local. We have started to do some work on what the thresholds might be. I have a fairly long list of examples, but I will set out some of the major ones.

For class 1 retail, which covers most shops except those selling bulky goods, we suggest that developments above 5,000m^2 should be designated as major developments. For residential development, we suggest that the threshold should be 300 residential units. For wind farms, which are always of interest, we suggest a threshold of 10MW output. We are suggesting criteria that will catch the largest and perhaps the most difficult-to-process applications. The major developments category is designed to include those developments that—by their nature, size and complexity—will be difficult and will therefore take longer to process. The proposal is not supposed to be a better way to process them. It is supposed to reflect the complexity of the processing of large applications.

Scott Barrie: Will there be flexibility? For example, under the criteria that you outlined, could a development of 298 residential units be determined as a major development if it would have a major impact on the area? One can imagine such developments being proposed. Will the system be flexible rather than absolute? Someone might want a development to be designated as a local development, but it could be argued that it would have a major impact on the surrounding area and should therefore be designated as a major development.

Michaela Sullivan: A development may have a major impact on the place that it is in, but that does not make it a major development in terms of the complexity of the planning application. I make it clear that the term does not indicate the impact that the development will have on the area. The distinction is important; a development of five houses in a hamlet of 10 would have a massive impact on that place, but the application would not be a major application in terms of complexity of processing.

On your example of a 298-residential-unit development, any desire that an applicant might have for such an application to be placed in a particular category is more likely to involve a preference for the major application category, as that would provide certainty about the timeframe within which the agreement would be processed. I am sure that, if necessary, the developer could squash in an extra couple of units.

We cannot allow for a range, as that might result in a debate each time about whether a development application falls within the major application category. We do not want the time in which planning authorities should be processing the application to be taken up with arguments about whether the application falls within that category. We need to draw a line and applications will fall either above or below that.

However, the processing mechanisms that will be in place for local applications will be equally robust and inclusive, so applicants will not get a better hearing by having their application in one category rather than the other. Proper processes will be in place for determining local applications, so there should be no concerns that such applications will be dealt with in a way that is second rate.

Scott Barrie: Are you sure that the three-tier hierarchy will not result in extended debates on whether an application should fall into one category or the other? Will such a system achieve the aims of the bill without simply creating yet another hurdle?

Michaela Sullivan: That will depend on how the criteria are defined. As I said, we are looking to set a bar or hurdle so that the major development category would apply to a retail development of 5,001m^2 but not to one of 4,999m^2, and that would be the end of the matter. Clearly, by choosing what to put on the site, the applicant will have some leeway about the category that will apply to the application. However, we intend to have a set threshold, which will not be the subject of negotiation.

Jim Mackinnon: I should also clarify that, for example, an applicant who wants to make an application for a mixed-use development will be able to seek the views of the planning authority on whether that will be treated as a major application.

Scott Barrie's central point about the devil being in the detail is absolutely right. For that reason, we will consult on what should constitute a major development so that we hear the views of planning authorities and other interest groups such as investors and industry, community and environmental groups. We have done some work on that issue, but we will consult on it.

Similarly, we will consult on what should be removed from and what should be added to planning control and we will publish our research on the review of permitted development. The draft orders will also need to be circulated and consulted on, so stakeholders will have many opportunities to influence things. However, Scott Barrie is right to say that a lot of detailed work needs to be done. In planning, we have a good track record of involving our stakeholders and we certainly intend to do that. If we are to modernise the planning system effectively, we need input,

especially the critical input of local authorities, which deal with such applications daily.

Scott Barrie: My next question seeks to find out the rationale for the provisions regarding the initiation and completion of development. Why will developers be required to inform the planning authority when they begin and when they finish a development?

Jim Mackinnon: The provision on initiation is quite important. At the moment, developers have five years in which to begin a development—under the bill, we will take steps to reduce that period from five years to three—so a development to which the planning authority granted permission in 1998 might not have started until 2003-04. Sending out a message to developers that they must tell the planning authority when development has started will herald—especially for developments that are particularly sensitive or complex—the start of a much more proactive approach to enforcement. For authorities that cover large areas in the Highlands, the Borders and the south-west, the notification that the development has started will be the trigger for the planning authority to go out and monitor much more effectively what is happening.

The requirement to notify completion is needed for two reasons. First, for large developments that are phased over a long period of time, the planning authority needs to know how those are operating. Secondly, in developments that involve, for example, a performance bond, the money cannot be returned until formal sign-off is achieved to confirm that all landscaping has been completed and the roads have been restored. We are trying to embed that sort of approach into both the planning and the development processes.

Scott Barrie: That is excellent. I think that everyone would concur with your final comments.

Circumstances in which a development has already been carried out are dealt with by new section 33A of the principal act. What is the rationale behind the provisions allowing the variation of planning applications?

11:00

Michaela Sullivan: All applications evolve over time, because we have public consultation procedures and so on. The application to which consent is given is rarely the original drawing that was submitted, because a consultation takes place, the statutory consultees and local people have their say and the application is changed in response to that. However, in the past there have been concerns about the fact that an application may evolve to the point where it is fundamentally different from the original application. The provision gives the planning authority the opportunity to say that an application has gone beyond the substance of the original application, that it no longer accepts the variations and that there must be a new application, triggering pre-application consultations, neighbour notification and so on. The provision is intended to deal with situations in which, over time, an application evolves to the point at which it no longer relates to what was originally applied for.

Scott Barrie: Why is it felt that local authorities require additional powers to request that applications be submitted retrospectively? Where are the deficiencies in the current system?

Michaela Sullivan: Are you referring to situations in which an unauthorised development has taken place?

Scott Barrie: Yes. Where are the deficiencies in the current system that the proposed retrospective applications will remedy?

Michaela Sullivan: One provision allows for the charging of an increased fee for a retrospective application, to reflect the fact that if a retrospective application is made to a planning authority, that authority will have to confirm that there has been an unauthorised development and so on. At the moment, the same fee is charged for retrospective applications and other applications.

Scott Barrie: That is what I was getting at. The intention is to ensure that applications are produced timeously and that they conform to what is expected. We do not want developers to start work, to change the design and to expect to have a retrospective application approved. Everything should be above board in the first place.

Michaela Sullivan: That is right.

Scott Barrie: My final question relates to applications for planning permission and certain consents. I understand that Scottish ministers will have the power to prescribe what application form is used, to ensure consistency throughout Scotland. Is variation between the different planning authorities in Scotland a problem at the moment? Is the provision an attempt to ensure that there is continuity and standardisation?

Jim Mackinnon: Questions about septic tanks are not necessarily appropriate in the centre of Glasgow and Edinburgh, so there is some variation at the moment. We have done some work on the issue, because it is related to what we are trying to achieve in e-planning. We want people to be able to draw down a standard application form and to submit it to any planning authority in Scotland. We need to ensure that there is consistency of approach, instead of there being 34 different forms. The aim of the provision is to reduce the amount of diversity, but it is also

an important element of rolling out e-planning in Scotland.

Christine Grahame: I return to section 7 and the variation of planning applications. I listened carefully to what you said on that issue. I am part of a community that has gone through a planning application process that resulted in the application being approved, regardless of whether I agreed with that. Under proposed new sections 32A and 32B, applications can be varied if either the planning authority or Scottish ministers—the same provisions apply to both—decides that there is no "substantial change". Was consideration given to the possibility of allowing communities to challenge the term "substantial change"? The planning authority alone can decide whether there is substantial change, but the community may say, "Wait a wee minute; we do not agree with this at all. We consider this a substantial change." Was consideration given to the possibility of allowing the community further consultation or—dare I say it?—an appeal procedure in such circumstances?

Jim Mackinnon: That is certainly something that we are happy to reflect on. I take the point. One of the drivers behind the process is communities feeling that applications have been significantly changed without their being aware of it. As I say, we are happy to look at that.

Christine Grahame: It seems to fly in the face of the thrust of the bill, which is that there should be proper consultation and that heed should be taken very early on of communities' opinions. I suspect that some communities may feel sabotaged and may ask themselves what the point of the consultation was. They may feel that a decision has been made regardless of what they want and that they have no right to be consulted on changes or asked whether they consider them to be substantial.

Jim Mackinnon: I am happy to reflect on that.

Christine Grahame: Thank you.

The Convener: I am conscious that you have been giving evidence for more than an hour and a half. Therefore, because we have many more questions to ask you, I am sure that you will be delighted to learn that we will have a short comfort break of 10 minutes.

11:06

Meeting suspended.

11:16

On resuming—

The Convener: I reconvene the meeting. Cathie Craigie has more questions.

Cathie Craigie: I wonder whether we could all have some of what Mr Mackinnon is drinking. It looks very interesting.

Jim Mackinnon: Interesting is a good way to describe it. My description would not be more positive.

Cathie Craigie: I would like some information about the neighbour notification proposals. There is a major change in responsibility from the developer to the local authority. How will the change improve the system and public involvement in the process?

Jim Mackinnon: First, there are two aspects to neighbour notification. One is the requirement placed on planning authorities to notify owners and neighbours of significant proposals in the development plan so that they get early warning of what is happening in their area. The second aspect is that neighbour notification is at present, as you say, the responsibility of the applicant and there have been concerns that applicants have not been sufficiently rigorous in fulfilling their responsibility. There is more trust and confidence in local authorities.

Secondly, we have heard of a number of cases of people travelling to the local authority offices, having received notification that plans and drawings are available, only to find that they are not. In future, when the planning authority carries out the neighbour notification, if someone wants to come to see the drawings they will be there. That is very important. We are also allowing a longer time in which to comment on a proposal—the period will increase from 14 to 21 days.

The change also provides an opportunity for local authorities to effect some form of service improvement. As Scott Barrie suggests, if someone makes the effort to come to see the drawings they will probably ask questions. They might ask whether the application is a major or a minor one and whether it is local. They could also be given some idea of how the application will be determined and the timescale of the process. There is an opportunity to promote greater confidence in the planning system, raise awareness and improve the service to communities.

Cathie Craigie: Professional planners have expressed to me concerns about the resource implications of the additional workload that they see being introduced by the bill. How will local authorities cope with that? From discussions that I have had, it seems that professional planners are a decreasing species. How will you resource the new system?

Jim Mackinnon: The work that we have carried out suggests that the additional cost to an authority of carrying out neighbour notification will

vary between £50 and £93 per application. It is quite difficult to generalise because, in a tenemental area in a city, there might be an awful lot of people to notify, whereas, in a remote rural area, it might be relatively few people. The cost might also vary with different kinds of applications. If an authority is carrying out neighbour notification for the environmental improvement of an old railway line, it might have a long area next to tenemental property and there would be many people to notify. It is difficult to generalise.

We have said that there will have to be provision for fee increases to cover the cost of neighbour notification. It is also important to accept that it is not necessarily a task that will be carried out by professional planners, because it is possible to train people to do it and it is a perfectly sensible task for people who are trained in it. Just as every agent the length and breadth of Scotland has to carry out neighbour notification, local authorities will be able to equip people to do it very efficiently and will get into the way of being able to interpret consistently what neighbouring land involves across the authority.

The cost of neighbour notification is not an enormous hurdle. We are aware of the resource issue and will have to make provision for it, but it will not necessarily impact on the supply of professional planners.

Cathie Craigie: That is fine, thank you.

There are proposals in the bill for the introduction of pre-application consultation. How will that work in practice?

Jim Mackinnon: There will be a 12-week period between an applicant notifying the planning authority that they have an application that falls within a certain category—either major applications, developments that are significantly contrary to the development plan, environmental assessment cases or significant bad-neighbour developments—and submitting the application. In that period, the applicant will have to engage not only with local communities but, I suspect, with key stakeholders. Because things that they want to do might impact on the interests of, for instance, the Scottish Environment Protection Agency, Scottish Natural Heritage or Scottish Water, a range of stakeholders will have to be involved in the discussion. When the applicant is minded to submit the application, they will be expected to produce a report that demonstrates how they have approached pre-application consultation and what they have done to amend their proposals in the light of the consultation. If the planning authority does not feel that the applicant has done enough, it can return the report for more information.

The planning advice note on community engagement will have to explore that so that we are a bit clearer on what is required in the process, but that is how we envisage pre-application consultation working in general terms; that is the specific provision in the bill. Scott Barrie talked about detail; there is more detail to be fleshed out on pre-application consultation. The intention is to give people the opportunity to influence the shape and detailed content of the application. That does not mean that objections will be removed, but it is easier to change plans when they are in gestation than once the applicant has made up their mind. That requires quite a significant culture change on the part of the development industry. A developer might think that 300 houses are a good idea in a certain area but, as a result of consultation, they might increase or reduce the number or change the layout. There might also be issues with affordable housing, which John Home Robertson talked about.

That is the sort of engagement that we expect. Communities should be able to see how the application has changed from the applicant's initial thinking to the submission of the application. Of course, they will still have opportunities to comment on the application—including through lodging objections—as it goes through the more formal procedures.

Cathie Craigie: We have experience of pre-application consultation on telecommunications installations—and we can make judgments only on the basis of experience. My experience and that of communities is that, although the communities involve themselves in the pre-application consultations, suggestions that they make about how an application could be improved—by resiting a mast, for example—are not fully considered and are knocked down with a technical argument that the community does not have the expertise to challenge. Perhaps the technical argument is framed in such a way that it bamboozles the people in the hope that they will go away. The public then thinks that the pre-application consultation was unsuccessful in involving their opinions. Why should this be different?

Jim Mackinnon: The key difference is that we are putting this process on a statutory basis, through secondary legislation if appropriate, but also through guidance and advice that will demonstrate what is required in a pre-application consultation. The planning authority will have the ability to say, "No, you have not done enough in that area. Go back and do it." At the moment, all that an applicant has to say is, "Here are the documents that I have to submit as part of the planning application." However, there will be a much stronger emphasis, hopefully underpinned by statute, on giving the council the clear authority to say, "Sorry, you have not done enough in that area." An audit trail should demonstrate why some things were taken into account and reflected in the

application and why some were not. Some aspects of an application may not be negotiable, often for technical reasons. We are essentially underpinning in statute the pre-application stage as well as the planning authority's ability to put back the application if it feels that consultation has been inadequate.

Euan Robson: What types of development might go to pre-determination hearings? The policy memorandum talks about some, but it would be helpful to get a flavour of the kinds of things that the Executive envisages as being the subject of pre-determination hearings.

Jim Mackinnon: The starting point was that planning authorities in Scotland had an inconsistent approach to the circumstances under which they offered hearings and how they were conducted. Certain types of application should go to a council hearing. For example, a housing development, which was clearly contrary to the development plan, could be proposed for public open space that is close to a residential area. The housing could be a significant bad-neighbour development in which there may be a lot of noise. That type of development or environmental assessment case could result in sustained local objections.

We are also clear that, given the variety of ways in which the hearings are conducted, we need to draw up a code of conduct. That would cover matters such as who to invite to hearings, or whether everybody on a 300-person petition would be allowed to speak. What would be the arrangement about who speaks first—the applicant or the objector? What role would key agencies and the local authorities play? When and where would the hearings take place? What, if any, is the arrangement for cross-examination? How would people be informed of the decision? We are setting out in the bill the circumstances under which the hearings would take place, but a lot of other connected work needs to be done. The Scottish Society of Directors of Planning has already contributed helpfully to that. However, a code of practice would clarify and introduce greater consistency to the conduct of the hearings.

Euan Robson: Clearly, a code of practice would be helpful. You mentioned inconsistent approaches. As I see it, proposed new section 38A of the 1997 act does not require a duty to publish procedures. For example, local authorities can rightly adopt procedures, but if you want consistency, it might be helpful if they had a duty to publish their procedures. That would create an opportunity to compare procedures. One authority may have a particularly unusual or innovative procedure, or an unhelpful procedure could be highlighted. Perhaps you could think about that.

Proposed new section 38A(3) curiously says that the authority itself will determine the right of attendance at a hearing. Although the Executive determines who will be allowed to participate in the hearings, the local authority can decide who can attend the hearings. Let us say that a controversial application that involves a council itself goes to a pre-determination hearing. The council could say, "We will not allow anybody to attend other than those who can participate." That would mean, for example, that the press could not attend the hearing. Is that really what is envisaged in subsection (3) or, on reflection, could the subsection be subject to guidance, a code of practice or whatever? It might be used in a way that was not intended.

11:30

Jim Mackinnon: We are happy to examine the wording. You mentioned local authority cases, but ministers have already announced that they intend to apply additional scrutiny to developments when there are concerns about local authorities acting as judge and jury in relation to developments in which they have a financial or other interest.

Euan Robson: Yes, but proposed new section 38A(3) will allow local authorities to exclude from a hearing people who wish simply to go and listen to or report what is said, which seems contrary to the spirit of the bill. However, that is something for consideration at stage 2.

Jim Mackinnon: That is a helpful comment. We will certainly consider the matter.

Christine Grahame: Under the delegation scheme, a distinction is made between applications that will go to the local authority's planning committee and applications that will be determined by a planning officer. I do not think that there is necessarily a problem with that. I take it that a planning officer would deal with, for example, an application for an extension to a conservatory or the installation of new windows. However, an issue arises when there is an appeal against the decision. The bill says that the appeal will be decided by elected members of the planning authority. It seems that several councillors will sit and listen to a discussion about whether Mr McGinty's conservatory should be 7ft by 11ft or 6ft by 5ft. Is that what you envisage? Is that not an inappropriate use of resources?

Jim Mackinnon: Lynda Towers might want to say more on the European convention on human rights aspects. A number of councils are quite keen on the provision; in fact, the Parliament has been petitioned on the matter by Dundee City Council. There is an issue about whether the Scottish Executive inquiry reporters unit should send people out to make decisions on small-scale

applications. Some 30 to 40 per cent of applications are for minor developments such as conservatories and boundary walls.

Scott Barrie asked me about the justification for the hierarchy. We tried to apply the same logic to appeals. Every planning authority has a scheme of delegation at the moment. They vary, which is perfectly understandable, but the trouble is that some councils do not allow officials to refuse permission. We intend that, in future, they should be allowed to refuse permission.

Christine Grahame: You are talking about officials rather than councillors.

Jim Mackinnon: Absolutely. If an application is significantly contrary to the local plan or is controversial, it is only right and proper for elected members to make the decision on it. If there is an appeal, it will go to the planning division of the Scottish Executive, which will consider whether it should go to the inquiry reporters unit. For appeals on small-scale applications such as those that involve minor changes of use, boundary walls and conservatories, we seek to introduce a review of the planning authority's decision by elected members.

Christine Grahame: That is, the councillors.

Jim Mackinnon: Yes. There should be fewer appeals because the review of permitted development should lead to fewer small-scale developments.

Christine Grahame: Okay. I take it that the review procedure will be standardised throughout Scotland so that what happens in the Lothians will not differ from what happens in the Borders or the Highlands and Islands, notwithstanding udal law; I look forward to hearing more about that.

Jim Mackinnon: Just as there are inquiry procedure rules for appeals, which we will have to update, there will also be rules for the conduct of local appeals tribunals. They will be in secondary legislation.

Christine Grahame: As distinct from planning advice notes?

Jim Mackinnon: Yes.

Christine Grahame: Fine.

Mary Scanlon: What improvements will the changes to the current appeals system make and what are the intentions behind that? What do you think will be the result of the changes and why are they necessary?

Jim Mackinnon: The changes to the appeals system are quite far reaching. Christine Grahame asked me to explain local appeals tribunals. They will mean that small-scale appeals will be determined locally and closer to communities, which is a significant step. We are also reducing the timescale for lodging an appeal from six months to three months, which should reduce the period for uncertainty. Currently, an appeal is lodged with the inquiry reporters unit. We propose that in future an appeal to the centre is lodged with the Executive's planning division. If a planning authority has taken a decision that is entirely in line with an up-to-date development plan, and there are no other material considerations, the appeal would go no further. That is what is called early determination.

If an appeal goes to the inquiry reporters, we propose that the Scottish ministers will decide on the method of determination: whether the appeal will be dealt with through an inquiry or written submissions. That decision will not rest with the applicant or appellant; ministers will decide whether the appeal is better handled by written submissions rather than by a full-blown public inquiry. We are also essentially restricting an appeal to the grounds on which the planning authority took its decision.

The committee has raised questions about variation in planning applications. Currently, we can address a planning application and the reasons for its refusal in the appeal process. We can do that, for example, by changing the application, reducing the density and changing the access point. That will not be allowed in the future, but there may be exceptional circumstances in which a new piece of evidence emerges. That does not mean that we would want to open up an application completely; we are trying to ensure that, if the planning authority's officials produce a report for the council that says that they believe that an application should be refused for whatever reason, they can essentially rely on that report as their defence or their decision rather than having to write a fresh and separate precognition. There are therefore significant changes in that area.

Mary Scanlon: Absolutely. As you have just said, you are limiting the introduction of new material at an appeal and restricting the available information to that which was presented to the planning authority in the original planning application, but there will be limited exceptions. Can you give us an example of what those could be?

Lynda Towers: It again goes back to questions of ECHR rights. It would be convenient to say that appeals would be decided only on the basis of what was in front of the planning authority, but there are instances in which there might be a change—for example, in Government policy or in practical circumstances—that would amount to a material consideration in terms of planning law. To prevent people from being discriminated against and prevent findings by a court that an appeal had

not been dealt with appropriately, there must be a catch-all provision that says that, in exceptional circumstances, additional information will be admitted. That will have to mean exceptional. It goes back again to the culture-change aspect. The provision should have the effect of preventing applicants from bringing in, perhaps because it is more convenient to do so, new information at a later stage, rather than their having it, if they could, in front of the planning authority at an earlier stage.

It is another step to ensure that the process is truncated and that when communities and the planning authority are considering an application all the relevant information will be there. Developers and applicants will be encouraged to produce all information at that time because of the difficulties in adding new information later.

Patrick Harvie: Clearly, a great deal of time has been spent thinking about appeals. Mr Mackinnon mentioned the separate consultation on appeals. Can you tell me how the Executive's thinking reflects the importance of the Aarhus convention and the directive that implements it?

Lynda Towers: The Aarhus work is proceeding apace. It has been taken account of in the context of the bill, but the issue of planning appeals is being dealt with separately in the context of the existing system. Any developments that arise out of the Aarhus convention will have to be reflected at a later stage. At present, there is no legislation that implements the Aarhus provisions.

Patrick Harvie: Does that mean that legislation might be needed in future, after the bill is enacted?

Lynda Towers: It might be, depending on how the convention is to be implemented, but no decisions have been taken yet.

Patrick Harvie: Is there an expectation of when the decisions will be taken?

Lynda Towers: I cannot tell you that, as I would have to check with the Executive division that deals with the convention.

Cathie Craigie: On the general question of appeals, one concern in my community is about the lack of resources that are available for community groups to represent themselves at appeal hearings. Has any thought been given to providing funding for communities in relation to appeal hearings?

Jim Mackinnon: I have two points on that. First, we have consulted on modernising the inquiry process. The intention is to make it less adversarial, but no less robust. There is no doubt that people feel disadvantaged when they have to turn up at an inquiry that could last weeks, if not months. The procedures that we hope to introduce should make the process less of a burden on communities. The issue is not just about procedures; it is also about culture and practice. For example, reporters need to take a much stronger grip of the conduct of inquiries.

Secondly, I find that many communities articulate their case strongly. The depth of knowledge in some communities on, for example, telecommunication masts or, particularly in the convener's constituency, opencast coal mining and waste issues is truly impressive. We need to get away from the idea that a long argument and lots of paper mean that a case has been argued better, because I am not sure that that is true. However, we are considering the provision of additional resources to support communities. Mr Chisholm might be able to say more on that matter when he comes before the committee.

Cathie Craigie: I do not disagree that communities can make strong arguments and have their cases considered fully but if people have to take time away from work or incur travel costs they are at a clear disadvantage. We need to take account of that.

Jim Mackinnon: There are two other aspects that I should have mentioned. The first is the Executive's support for Planning Aid for Scotland—among all the public authorities in Scotland, we are the largest supporter of Planning Aid for Scotland by a long way. That is important. The second is that we have found £2.25 million for the planning development budget over the next two and a bit years to support upskilling. We do not intend that to be directed solely at planning authorities; we are keen to explore funding for mediation projects and for upskilling and resourcing communities.

Christine Grahame: I am trying to think through the local development plan process. If the stage has been reached where the plan is set and the communities feel that it gives them security, but the planning authority then grants a development that is either contrary to the local development plan or a substantial variation of it, is there any mechanism for people in the community to appeal against that?

Jim Mackinnon: The bill makes no provision for that.

Christine Grahame: Was that matter given consideration during the drafting of the bill?

Jim Mackinnon: We had a wide-ranging consultation on community involvement in planning, including on rights of appeal, after which ministers reached their conclusion.

Christine Grahame: I know that you cannot go into policy issues, but I want to ask a legal question. If a proposal was produced that was prima facie contrary to a development plan, and

there was no right to a hearing or appeal, would that not be a possible breach of the ECHR?

Jim Mackinnon: That is a legal question, so I ask Lynda Towers to answer it.

11:45

Lynda Towers: There are two aspects to that. First, if the proposal was non-compliant, it would be subject to the general scrutiny provisions anyway. Secondly, on the question whether it would be ECHR compliant not to have an appeal in such circumstances, it should be said that the ECHR is very much a balance of rights, and the view that has been taken so far is that the balance in the bill as drafted is ECHR compliant.

Christine Grahame: That remains to be seen. Perhaps somebody will challenge it.

Lynda Towers: You may be right.

Christine Grahame: It is an interesting line to take. You raised the issue of ECHR compliance, and we know that every bill must be certificated as ECHR compliant.

I have another little technical question. Outline planning permission is being changed to in-principle planning permission—can you give me an example of the difference between the two, so that I know what we are talking about?

Michaela Sullivan: The essential difference is that, at the moment, outline planning permission can be obtained, which then has provision for the submission of reserved matters. Let us suppose that we are talking about a residential development. Having got outline planning permission for a 300-unit residential development, you can then get the reserved matters, including the siting and design of seven-storey flat blocks, approved without submitting a further planning application and therefore without neighbour notification.

Christine Grahame: And without any objection procedure, I take it?

Michaela Sullivan: That is right.

The proposal for planning permission in principle establishes the principle that the 300 residential units can be built. However, when proposals on key considerations such as siting and design come into the planning authority for approval—a seven-storey block of flats and a six-storey block of flats, for example—the neighbours will be notified and will have an opportunity to object to or comment on the siting or design. That will increase people's ability to participate in decisions on the detail when consent has been granted in principle.

Christine Grahame: That sounds like what my history teacher would have called a very good thing. I am happy with that. Thank you for explaining it.

Euan Robson: Could you clarify something important? An applicant might say at the outline stage, "I would like a density of 300 houses on this site," but when the proposal reaches the more detailed stage, the number of houses could rise. That rise could be considerable—instead of 350 houses, 420 houses might be proposed. Could a pre-determination hearing deal with such situations?

In a number of cases, permission has been granted on an outline basis for a development of an understood density only for the concept of the permission to be completely altered by the density being added to. The developer has said, "Unless I can add to the density, the profitability of the development is not realisable and I'll not be able to proceed, but you've given me the precedent in the outline permission." Could that be dealt with in the proposed pre-determination hearings?

Michaela Sullivan: Planning permission in principle can state in the decision notice the number of units for which consent is given. If the decision notice says 300 units and the developer comes back with a proposal for 420, it would be in the gift of the planning authority to say that a whole new application was required and that that new application would then be considered. There should not be a problem so long as the decision notice states the number of units for which consent is being given. The wording of the decision notice is up to the planning authority, so it needs to be careful that it words the notice appropriately. That would enable it to turn away the kind of detailed proposals that you described and ask for a new application.

Euan Robson: That is very helpful.

The Convener: Christine Grahame.

Christine Grahame: Me again? I have a starring role today for some reason. It must be the excitement of planning—it is actually quite interesting.

With regard to signing off a development, you referred to ensuring that what was meant to have been done had been done in terms of planning obligations or planning gain, for example roads and so on. How does the new system improve on the existing one?

Jim Mackinnon: The provisions broadly mirror the current legal provisions in relation to section 75 planning agreements, but there are a number of significant changes. First, the agreements will be on the public register, which they are not at the moment. There is a feeling that such agreements are drawn up and no one knows what happened next. In addition, if a developer feels that they

have discharged an obligation they can ask the planning authority to have that obligation removed. If the planning authority does not agree, the developer can appeal. The new system makes provisions for more transparency and for reviewing discharge.

Another significant change is that if the planning authority and the applicant reach an impasse in relation to the benefits that the developer will provide, and the developer goes to appeal, he may offer those benefits at the appeal—at the written submission or formal inquiry stage—and the reporter can then reach a view and may grant planning permission on that basis.

Christine Grahame: Am I allowed to move on to enforcement?

The Convener: No.

Christine Grahame: I have been guillotined.

The Convener: The bill proposes the introduction of good-neighbour agreements where appropriate. What is the purpose of those agreements and how effective do you believe they will be?

Jim Mackinnon: Most current good-neighbour agreements are in the United States. We felt that there was pressure to have such agreements here, particularly in cases in which communities felt that developments that were not managed and monitored carefully would impact seriously on the quality of life in their area. It was felt that, rather than the agreement being concluded between the applicant and the planning authority, the ability to conclude an agreement between the developer and the local community would ensure that the developer was much more aware of its obligations in relation to the community and that the community had an on-going role in the monitoring and management of the development in its area.

Just like the planning obligations to which Christine Grahame referred, the key issue is that the provision would be binding against successors and title. Its purpose is to catch developments that will have a significant impact on their local area and to ensure that the applicant or the developer embraces community concerns and provides the community with a stake in monitoring and managing those developments.

The Convener: Where good-neighbour agreements are appropriate, how will you ensure that they will actually be put in place? I accept that every development will not need or require a good-neighbour agreement, but where the community considers that such an agreement is appropriate, how will you ensure that the developer is obliged to sit down and draw one up? Will the agreements be voluntary or will there be criteria under which they are considered to be mandatory?

Jim Mackinnon: If necessary, good-neighbour agreements could be made a condition of planning consent. In such circumstances, the planning authority would require a good-neighbour agreement as a condition of the granting of planning permission. That is an alternative to trying to prescribe everything in detail in legislation. A development that might seem innocuous in general terms could be quite sensitive locally and, in the light of community concerns about a proposal, the planning authority could attach a condition that an agreement would have to be entered into. The provision gives some flexibility.

The Convener: My concern is that some, although not all, developers make promises when they want a community to go along with a development that it might have reservations about. Developers sometimes promise the earth, but the reality is that, once planning consent is achieved, the commitments on investment, in the form of section 75 agreements or the bonds that are sometimes put in place for the restoration of land in the case of opencast sites, are not always followed through. We need to ensure that proper enforcement is put in place and that the correct incentives exist to ensure the proper implementation of good-neighbour agreements.

Jim Mackinnon: We have absolutely common objectives on that. The provisions that we propose should allow that to happen, because the agreements that we are talking about will be not voluntary but legally binding and will be between the community, or representatives of the community, and the developer. Even if control of the project changes hands, the agreement will still be binding on the developer's successor. It will be a legal agreement that will be enforceable through the courts and enforceable against successors in title. The agreements will be registered in the register of sasines, so legal grounds will exist to ensure compliance. Our aspirations and objectives on the matter are the same.

The Convener: Will the local authorities be responsible for enforcing the agreements?

Jim Mackinnon: The good-neighbour agreements will be between communities and developers, if they are a condition of consent. However, there could be separate planning obligation agreements to tie in developers.

The Convener: I appreciate that the agreements will be between communities and the developers, but who will be responsible for enforcing them? Communities will have the right to go to court but, as they would find it difficult to resource that process, it would be more

appropriate for the local authority to be the enforcer.

Jim Mackinnon: If specific conditions are put in a planning permission, there is no problem in theory with the local authority taking enforcement action against the developer.

Mr Home Robertson: You set great store by the fact that the agreements will form part of planning consents and that they will be in the register of sasines and will be enforceable against successor developers. However, what will happen if a developer goes into liquidation or goes bust?

Jim Mackinnon: For sensitive developments, it is now common for planning authorities to take out bonds to guard against that. That happens particularly with opencast coal mining or mineral operations. There have been examples in Scotland of authorities accessing such money to ensure proper restoration of sites.

Mr Home Robertson: So the establishment of a bond is the only bankable way of ensuring that obligations are fulfilled in due course.

Jim Mackinnon: Yes. Lynda Towers will correct me if I am wrong, but that is very much a private contract.

Christine Grahame: I, too, have a question on that issue. As I understand it, the limits for bonds are low. I would have concerns about the obligations in contractual agreements between communities and developers or between planning authorities and developers, if the only way in which they could be enforced when breached was by going to the courts, where people often compromise. Developers know that people will not keep paying out money, because they will never get all the expenses back. Is there anything in the planning advice notes and charters about setting higher levels, either in bonds or in secured money of some form, that are proportionate to what the developers are supposed to do and which can be accessed when developers go into liquidation? I do not know what happens to a bond if a company goes into liquidation—I have no idea whether the liquidator gets the money or whether the money is secured. If a real remedy exists, developers will not breach their agreements, because they will know that the enforcement provisions have some clout.

Jim Mackinnon: I am not a huge expert on the detailed operation of bonds, but my understanding is that the amount can be as high as the planning authority can agree with the developer.

Christine Grahame: Is the money secured, though?

Jim Mackinnon: As I understand it, yes.

Christine Grahame: Does it count as a priority debt in a liquidation?

Jim Mackinnon: I cannot answer that, but I am aware that councils in Ayrshire and Lanarkshire have regularly taken out bonds to ensure the proper restoration of sensitive opencast coal sites.

Christine Grahame: Will the enforcement charters and planning advice notes deal with that? A serious issue is that planning authorities need to have a stick, which one hopes they will not need to use. Developers need to know that the planning authority's money is secured and cannot be varied. We need to ensure that developers do not leave roads unfinished and playing fields not built. We know that roads are not completed in developments but authorities sometimes just give up on them.

12:00

Jim Mackinnon: In drawing up an enforcement charter, planning authorities will need to have regard to guidance and advice from the Executive. We will be happy to consider the issue in that context.

The Convener: I understand that there will be a right of appeal to the local authority for arbitration if a good-neighbour agreement has not been met. In the event that a new developer acquires the title and the corresponding legal obligation to comply with a good-neighbour agreement, and if it is recognised that the agreement needs to be modified or changed but the two parties cannot reach agreement on how that should be done, will the right of appeal on such matters extend to both the developer and the community? In those circumstances, will both parties have a right of appeal to the local authority and, ultimately, to the Scottish ministers?

Jim Mackinnon: My understanding is that only the applicant will have a right of appeal, but I will check that in detail and come back to you.

The Convener: If that were the case, I would have some serious reservations about that. Those reservations are based on personal experience of how bad developers will wriggle on a hook to evade their obligations to the community that they entered into at the start of the planning process. The Executive needs to reflect on the issue.

Jim Mackinnon: I am happy to look into the matter to clarify the position.

The Convener: Thank you.

I have a question on stop notices. The committee has heard that a big issue for communities is that the conditions that local authorities attach when they grant planning consent are often not worth the paper that they are

written on because they are not enforced. Under the bill, local authorities will be required to prepare an enforcement charter. What will such charters contain? What difference will be made by authorities being given greater powers to issue stop notices for developments that contravene planning consent conditions?

Jim Mackinnon: It will probably be easier if I deal with temporary stop notices first. At the moment, if a development is causing environmental damage such as pollution or noise, the planning authority is required to allow 28 days for the enforcement notice to take effect. During those 28 days, the potentially damaging operations can continue. By virtue of the new temporary stop notice, the authority will be able to stop things immediately, which means that any damaging operations can be quickly brought to a halt until the enforcement notice and pukka stop notice kick in.

The bill clarifies the arrangements for compensation in such circumstances, so planning authorities should not feel that they might be under threat of losing lots of money. Clearly, that is a concern for authorities in situations in which they might deprive people of their livelihood, although the reality is that compensation has been an issue in very few, if any, cases. Temporary stop notices will allow the planning authority to take action promptly to stop developments that are damaging the quality of life in local communities.

Enforcement is carried out differently in different parts of Scotland. For example, the planning authorities in our two largest cities have dedicated enforcement teams, but authorities in some parts of Scotland do not even employ enforcement officers. Clearly, people feel strongly about the need for enforcement. If public trust and confidence in planning is to be promoted, planning authorities need to deal efficiently and effectively with the sort of things that give planning a bad name. As Christine Grahame mentioned, those include streets not being completed and open spaces not being made up. People feel that we need a significant step change in enforcement.

The purpose of the enforcement charter is to get planning authorities to focus on the service that they will provide. What will the authority do if someone phones up to make a complaint? There may not have been a breach of planning control. What will authorities do, and how will they progress complaints? The charter sets out a service-level agreement that describes how authorities will deal with enforcement issues.

We have made clear—this is also part of the culture change—that we could not take pride in the quality of the planning decision if we judged it by the number of conditions that we attached to it. It is much better to have five very precisely drafted conditions on which the planning authority will act than 50 vaguely worded conditions with which there is limited prospect of action. The point is to get planning authorities to focus more precisely and to be proactive on the key aspects of a development that are likely to cause concern.

As I explained to Scott Barrie, one advantage of the initiation certificate is that people know when development will start. If matters connected to X are not happening, or houses are not being occupied until a road is complete or a play area is provided, they should be able to get on top of that. The provisions on enforcement are very important. If we are to promote genuine trust and confidence in planning, people must be more confident that action will be taken against an authorised development for breaches of planning law.

The Convener: Local authorities often do not necessarily see enforcement as a priority—sometimes they see it as a resource issue. One of my colleagues will touch on the attached financial memorandum, so I do not want to go too far down that road. However, a question arises as to whether a local authority planning department sees enforcement as a people resource or a financial resource, in which case it is a priority.

At the moment, enforcement is not a priority. Following your discussions with local authorities and developers, are you confident that the culture will change as a result of the bill's improvements to enforcement?

Jim Mackinnon: The white paper and discussion on planning reform made it very clear that there is wide consensus throughout Scotland about the need for more effective enforcement. That is critical. The enforcement charter will require authorities to think about the service that they provide, which they have not been required to do in the past. As you rightly say, the situation is variable.

It is important to remember that a more proactive approach to enforcement will not necessarily require more planning officers: much of the work can be done by trained people who have a basic knowledge of planning law and who can determine what constitutes a breach. Occasionally they may have to take professional or legal advice, but there is no doubt that planners are not necessarily required. Much of the work might involve the methodical recording of what is happening in an area. If allegations have been made of blasting or truck movements, people must be there to be absolutely sure what is happening.

The bill gives Scottish ministers powers to audit certain functions of the planning authority. If there was a feeling that certain planning authorities had not attached sufficient importance to enforcement, ministers could conduct an audit not just of the

planning service in general but more specifically of enforcement. If they found that there had to be a step change in enforcement, they would recommend that to the council accordingly. If the council was not prepared to accept such a recommendation, it would have to explain its reasons to ministers.

The Convener: It may become apparent in a particular area of the country that, on a regular basis, a certain developer is not good at complying with planning consent. The local authority will then have to use its new powers of enforcement. Could that information be made easily accessible so that people know that the developer has a bad track record? Could another local authority take that information into account in considering future planning applications?

Jim Mackinnon: It would be difficult for the planning authority to take that information into account in determining planning applications, but a developer's track record may well send out messages about the need to be particularly vigilant in relation to its operations and activity. It is arguable that the matter is related to the start notice.

We are considering the matter, because we know that there are concerns about certain developers' track records. There are always difficulties and developers can change their identity perfectly legally, so there is no panacea, but we are certainly aware of the issue. We are considering whether we can do more about it without getting into difficulty in relation to the basic provisions of the ECHR. I do not think that information about a developer's previous activities could be applied in relation to the termination of a planning application, but there might be scope for a bit more proactive monitoring of what a developer has done in the past.

Christine Grahame: Perhaps it is early days, but the temporary stop notice seems quite draconian. Just for devilment, I will take the side of the developer. Are we in the territory of criminal law, with a requirement for the evidence to be beyond reasonable doubt rather than on the balance of probabilities? You state that it will be an offence to breach a temporary stop notice. Is a temporary stop notice a civil layer of evidence or a criminal level of evidence?

Lynda Towers: It is civil.

Christine Grahame: Suppose that I am a developer and people are complaining about me, saying, "She's got trucks going by and they are stirring up dust in the environment. My children are coughing and my washing is getting dirty." How will the stop notice be drafted and served on me? What is the timescale? What right do I have to challenge the notice, given that the complaints might be vindictive? Who will hear it? The matter is important because, if you get it wrong and my development does not go ahead for four or five days, I will lose a lot of money. I might pay more than £20,000 for a breach but I might suffer a loss of tens of thousands or hundreds of thousands. Contractors might be laid off and so on. How will the system work?

Jim Mackinnon: The bill contains some detail on that, but we will produce regulations on the new enforcement provisions.

Christine Grahame: Will you give me a flavour of how you expect the system to operate? You must have an idea. The measure is important to the community, but it is also important to developers. I am talking not about difficult cases that might arise, but the standard picture that I painted. How will the system operate? Will the notice be served at the site or at the company headquarters?

Jim Mackinnon: According to the bill, the notice must be in writing. It must specify the problem and state specifically what the developer must stop doing—vehicle movements at a certain time, blasting or whatever. The temporary stop notice may be served on the person who appears to the authority to be engaged in the activity or on anyone else who has an interest in the land, because sometimes there are subcontractors and the landowner and operator might be different. The bill contains a bit of detail on the matter, but we recognise that we might have to flesh out more detail in guidance, advice and regulations.

Christine Grahame: I am not being difficult. I just think that we need to know about the practicalities. We need to get an idea of how the notice will work. We do not want councils to be frightened to take action in case they end up in litigation with large claims for compensation.

Jim Mackinnon: Yes. Equally, the planning authorities will want some comfort. They will want to know that they are acting appropriately and within the law. In proposed new section 114D of the principal act we have taken steps to deal with compensation so that it will be less of an issue for planning authorities.

Mary Scanlon: I move to part 5 of the bill, which is on trees. I will divide my questions into two parts. First, I note that you are introducing six new provisions on tree preservation orders. Are those provisions likely to make the system more bureaucratic and will they make trees even less of a priority for councils? Will the provisions have resource implications?

Proposed new section 159(c) of the 1997 act says that planning authorities are

"from time to time to review any"

tree preservation order. The words “from time to time” are vague—they could mean some time or never.

12:15

Tim Barraclough: The provisions are not intended to make the system more bureaucratic and I do not think that they will do that. The principal changes are in two areas and will improve protection for trees and simplify processes. The provisions to improve protection will extend the scope of orders to protect trees for historical or cultural reasons, as well as their amenity value, and will extend the scope to replacement trees. In well-established woodlands, trees die and other trees grow in their place. Protection will be afforded to such replacement trees. I do not expect those provisions to increase bureaucracy.

Processes will be simplified. At the moment, we have two kinds of tree preservation order. We will adopt a single system under which a tree preservation order will have immediate effect and will have to be confirmed within six months. In a sense, that is a simplification.

The requirement to review “from time to time” is described in such terms to allow for flexibility. There are different situations, which depend on the threat to trees, such as gradual encroachment or an immediate threat. Local authorities should be aware of immediate threats and take action as appropriate. The drafting takes account of the fact that different trees are in different situations. The nature of TPOs varies, so it is impossible to identify a perfect timescale for reviewing them.

Mary Scanlon: The only question that you did not answer was about resources.

Tim Barraclough: I am coming to that. The financial memorandum suggests that the additional provisions will require on average about one full-time trees officer in each authority. For the entire planning system across all authorities, it is estimated that that will cost £2.7 million.

Mary Scanlon: I am sure that we will return to that, but I will move to the second part of my questioning. Will the bill be integrated with and take cognisance of the forestry strategy that I understand is about to be published?

I have two constituents who are probably experts on ancient woodlands and I have recently submitted quite a few questions on their behalf.

Christine Grahame: Mary is a star.

Mary Scanlon: Udal law and ancient woodlands—that is me. If there is anything eccentric, that is where I come in.

Mr Home Robertson: She said it.

Mary Scanlon: I have read section 26, which refers to trees and woodlands, but it does not seem to take into account the specific and unique category of ancient woodlands. The two gentlemen whom I mentioned brought me ancient maps with designations of ancient woodlands, which are important to our culture and history, especially as more emphasis is to be placed on the designation of historic trees. Proposed new sections 161A(1) and 160(1A) of the 1997 act refer to “trees or woodlands”. Does that take into account just a clump of trees, or does it include the unique designation of an ancient woodland, which I am told is as much about what is below the ground as what is above it?

My colleague Scott Barrie had to leave early so he asked me to pose a question on his behalf. Does the bill have scope to examine uncontrolled trees and high hedges?

Mr Home Robertson: Please do not preserve them.

Tim Barraclough: The provisions relate to preservation orders. I am not sure that there is any scope to apply such orders to high hedges, which in any case is far from what you have suggested.

Mary Scanlon: But does the bill contain any provision with regard to uncontrolled trees and high hedges?

Tim Barraclough: No, not explicitly.

Mary Scanlon: As I am sure you are aware, Scott Barrie has proposed a member’s bill on the matter, and has done a considerable amount of work on it.

Tim Barraclough: I do not think that trees and high hedges fall within the bill’s definition of development.

Mary Scanlon: So it relates only to the forestry strategy and to ancient woodlands.

Tim Barraclough: As far as ancient woodlands are concerned, the provisions extend the ability to apply tree preservation orders to woodlands of cultural or historical significance.

Mary Scanlon: So that would include areas that are designated as ancient woodland, which is a specific category.

Tim Barraclough: I think that the provisions would allow the specific category of ancient woodland to be included in the general category of woodlands.

Mary Scanlon: You think that they would.

Tim Barraclough: Yes. I expect that the term “woodlands” and the ability to identify woodlands of cultural and historical significance and apply tree preservation orders to them will cover ancient woodlands.

The provisions should be consistent with the forthcoming forestry strategy because they increase the scope for protecting trees. If further specific measures emerge from the strategy that could be dealt with by amendment at stage 3, we will be happy to consider that. That said, I should point out that the current provisions resulted from research that was carried out a couple of years ago and, when we consulted on them, they received almost unanimous support.

Mr Home Robertson: I, too, must defend Scott Barrie on this matter. Mr Barraclough said that the bill does not cover the problem of hedges that are growing out of control. However, its fairly extensive long title could cover anything to do with planning. Moreover, part 5, quite rightly and properly, deals with the issue of trees that need to be managed appropriately and preserved. I think that we are all glad that those provisions have been included in the bill. However, by the same token, would it not be appropriate for the bill to deal with trees or hedges that are causing planning problems? Surely the bill could include fresh legislative provisions to tackle what we all know to be a problem in some parts of Scotland. Obviously, the question is hypothetical, but what I suggest could be done.

Tim Barraclough: We would have to consider the detail of any such provisions and decide whether they fell within the scope of the proposed legislation.

Mr Home Robertson: In that case, I ask you to reflect on the matter.

Euan Robson: Part 6 deals with correction of errors. In what circumstances would errors be corrected?

Lynda Towers: We are not talking about rewriting decisions, but we live in a technical age and there have been cases when, for example, lines have fallen out of decision letters. Part 6 is a technical provision that allows us to sort out technical corrections of errors. Purely technical errors are not unknown in a court context.

I should point out that the bill offers the protection that if a correction affects the nature of the decision, the error itself is deemed not to be correctible. As I have said, it is very much a technical provision: once a reporter or the secretary of state has issued the decision letter, the individual is functus officio and cannot deal with any mistakes.

Euan Robson: Proposed new section 241C(1) of the Town and Country Planning (Scotland) Act 1997 says that

"the original decision is taken not to have been made"

and that

"the decision as corrected is taken for all purposes to have been made on the date the correction notice is given to the applicant."

I want us to be clear about whether there is any liability on someone who acts in good faith on the original and superseded decision. Let us say that someone has demolished something and the consequence of the corrected decision is that they should not have done so. Nothing can be done about that, but is there any liability on the person who has acted in good faith? In my view, there should not be, because if someone has acted in good faith, they have acted in good faith, but there may need to be some statutory protection for people in such a position.

Lynda Towers: Such a situation would not arise because it is clear that a demolition would affect the decision. That would not be a correctable error.

Euan Robson: I appreciate that the overall decision could not be affected by the correction, but let us say that we are talking about one part of a decision. Let us say that the overall decision was to allow a particular area to be developed. The correction could be to do with two trees that happened to be particularly prominent, the treatment of which was only one part of the overall decision. If someone cut down the trees, for example, new trees could obviously be planted, but the original trees could not be replaced. The original decision was about the development of a given area and one of its components was permission for an act that related to a particular aspect of the overall plan. I pose my question because such a scenario could create a significant problem for an individual who received a correction notice once they had taken a particular action. They could be left liable.

Jim Mackinnon: I am not a lawyer, but my understanding of the provision is that it does not relate to a correction that would change the substance of a decision. Let us say that there was an issue to do with trees and the decision said that the trees had to be removed. There might have been an omission in the decision letter that explained why that was the case. We are not talking about a situation in which it has been admitted that the trees should have been retained, for example. The provision is about allowing corrections to be made to what are essentially errors of reasoning or logic; it is not about changing the substance of a decision. I hope that that is right.

Lynda Towers: That is exactly what I was trying to say.

Euan Robson: Does the substance of the overall decision include all the details? If it does not, people could become liable for what they do.

Lynda Towers: A decision letter normally takes the form of the evidence. The decision and the recommendations will be based on the nature of the evidence. The decision part of the letter will reflect the weight that has been given to the evidence. That is important.

Let us say that an error was made in the narration of the weight that was given to the evidence. For example, a reporter might state, "I did not give any weight to the fact that there were trees here," when they should have said, "I did give weight to the fact that there were trees here." That would not be a correctable error because the weighting of that evidence formed part of the decision-making process. If a reporter made a mistake by saying that there were trees in a particular location, but forgot to say that there were 10 trees there, that might be a correctable error because it would not affect the nature of the reasoning in the decision-making process. The nature of what is omitted will determine whether an error is correctable.

Tim Barraclough: There is a further safeguard in that all corrections will require the consent of the applicant or the person who is responsible for the development. He or she will have to consent to any correction.

Euan Robson: In which section is that provision?

12:30

Tim Barraclough: It is in proposed new section 241A.

Lynda Towers: The very first provision is of relevance here. I was looking for the relevant provision and I have now found it. I was trying to say that proposed new section 241D(4) reflects the fact that

"A correctable error is an error which—

(a) is contained in any part of the decision document which records the decision,

(b) is not part of any reasons given for the decision."

In effect, one would be making technical changes; one could not make a change that was of any substance to the reasons for the decision or the thinking behind the decisions.

Jim Mackinnon: Would it help you, Mr Robson, if we could find some examples in which that has happened and provide the committee with those to show how the provisions would operate in practice?

The Convener: Yes, that would be helpful.

Euan Robson: The circumstance to avoid is one in which somebody, having had one document placed in front of them, has acted in good faith on that document and then is faced with another document that says something different and contradicts the action that they have taken in good faith. It is clear that nobody would wish a circumstance like that to develop, but can we be clear that the bill does not allow that situation to develop? That is all I want to know.

Jim Mackinnon: That is certainly not the intention of the provisions. We will establish some examples and determine how we can make that absolutely clear.

The Convener: Christine Grahame has one brief and final question.

Christine Grahame: Yes, it is a tiny one. Is there any time limit on when a correction can be made?

Lynda Towers: There is no time limit.

Christine Grahame: How does that impact on the appeals procedure? I assume that it does.

Lynda Towers: The effect is that there is a time limit to the extent that any correction has to be made within the time limit for an appeal, depending on the circumstances. If a correction is made, the appeal period runs again from the date of the correction.

Christine Grahame: But there is no time limit. A month or a year could pass—

Lynda Towers: No, any decision would have to be appealed within the time limit, whatever it is—perhaps three months, depending on whether the appeal is to the Scottish ministers or to the Court of Session; that time limit is set separately. A correction would have to be made within those normal appeal time limits.

Christine Grahame: I am sorry to nibble a bit more at this. You said that a correction would not be made to the substance of the decision, but that the reasons why the decision was made might be omitted in error from the decision notice.

Lynda Towers: No. If I said that, that was wrong.

Christine Grahame: Okay. It had concerned me that, if it was otherwise, somebody might change their mind about appealing once they looked at the corrected reasons.

Lynda Towers: No. Any change that is envisaged under section 27 should not change the outcome of the decision letter in any way.

The Convener: I will move on to questions about part 7, which concerns assessment. I understand that section 28 inserts four new sections into the principal act and introduces a statutory system for auditing each local authority's performance. Will you give us a bit more detail

about why that is appropriate and how you envisage any audit system operating?

Tim Barraclough: As you might be aware, the planning divisions in the Scottish Executive already conduct an administrative form of audit of the planning departments in local authorities. Those audits have been shown to be quite useful in identifying good practice and practice that needs improvement, but there are two main reasons for stepping the audits up to a statutory system.

The principal reason is to give the system more teeth and to make it more effective. There has been some concern that, in some cases when the Executive has audited an authority and come up with recommendations, it has not been clear what has happened to those recommendations and whether they have been acted on. A statutory framework for the audit programme provides a clear role for the Executive and a clear mechanism for making the recommendations public and for following up on them if the authority does not accept them.

Secondly, a statutory system will give a signal that we are serious about improving performance across the board in local authorities. This is about the culture change initiative: we need to have a system in which we can say to local authorities, "It is vital that you put your best efforts into improving performance, both in development planning and in development management. Here is a strategy system to underpin that."

The two elements are to give the system more teeth and to signal that this is an area that requires serious attention.

The Convener: As currently drafted, the bill will introduce an audit system. What consideration has the Executive given to the way in which the system will operate? Are you minded that the Scottish ministers and the Executive will audit local authorities, or is it more likely that a body will be appointed to do that?

Tim Barraclough: We have looked at the various available options, but we have not yet taken a final decision. The most likely outcome is that auditing will continue to be the responsibility of the Executive's planning divisions. We may decide to set up a dedicated core team that will take responsible for managing the auditing of planning departments. The team would be able to bring in experts from across Scotland.

The Convener: My final question on assessment relates to ministers' ability to investigate the planning decisions of a planning authority to see whether it has made proper use of its decision-making powers. How do you envisage those powers will work?

Tim Barraclough: We do not envisage those powers being used with any great frequency. There have been cases when communities have expressed concern that an authority's pattern of decision making does not seem to be consistent or compliant with what one might call the spirit of planning legislation, such as when it has consistently taken decisions that have gone against the recommendations of its officers or against the provisions in a development plan.

There is a precedent for the powers that we have put into the bill: we used the former Department of the Environment's inquiry into the planning system in north Cornwall as a template. I have only one copy of the inquiry document; if we can find a way of making it available to the committee, we will be more than happy to do so. It would give members an idea of the kind of thing we envisage.

Euan Robson: I assume that the regulations that are described in part 8 will have regard to planning authorities' capacity to cover their actual costs and of the requirement to invest in additional staff and other resources? Is that an appropriate reading of the intent behind the regulations?

Tim Barraclough: The fee regulations are designed to recover the processing costs. The intention of the new regulations is to ensure that the costs and outlays that planning authorities will incur in monitoring the conditions that are attached to planning consents, for example, are covered. Such provision is not available at the moment. The regulations would also ensure that authorities are able to introduce variable or increased fees for retrospective applications.

Euan Robson: New grant-making powers are to be found at the end of part 8. As the convener said earlier, there are circumstances in which local groups may wish to avail themselves of the opportunity for grant aid. Is it the Executive's intention to publish some kind of scheme under which the community groups might apply? If not, is it the intention simply to continue the existing practice, which is welcome, to assist Planning Aid for Scotland? Alternatively, would there be an opportunity to extend the parameters of the scheme and then publish something to allow community groups assistance in dealing with complicated or difficult situations?

Tim Barraclough: There are no specific plans for any new scheme; no such scheme is in the pipeline. The powers would enable us to produce one if we so desired. The immediate intention is to ensure that the grant aid funding for Planning Aid for Scotland is on a secure footing.

Mary Scanlon: In paragraph 272 of the financial memorandum, you say that the maximum fee for a development of more than 50 houses could go up

from £13,000 to £40,000. You state in paragraph 275:

"we are aware of the process taking up to two years at present, and we would hope to reduce this by at least six months."

Developers are being asked to pay three times as much for their applications, for which you hope to reduce the processing time by 25 per cent. I understood from our prelegislative scrutiny that developers hoped that the process would be much more speedy, given that they are having to pay three times as much.

Jim Mackinnon: The discussions that we have held with the development industry have revealed clearly that it does not expect major applications to be determined within two months. It is concerned about the black-hole syndrome, whereby applications disappear into the planning authority and no one knows when they will get a decision.

The purpose of the planning bill is to increase the efficiency and certainty of the planning system, but also to provide greater opportunities for inclusion. Major planning applications are complex to handle, as they could raise issues about impact on the environment, traffic and retail centres.

We want to ensure that we have in place robust processing arrangements. We are trying to pilot the ideas with a couple of major developments in Scotland to see how they work. We have established that substantial sums of money—hundreds of thousands of pounds—are involved pre-consultation in paying consultants to draw up environmental statements and so on. When the application goes to the planning authority, it is allowed to charge a fee of £10,000 to £14,000, which bears no relation to the cost of processing it.

We are trying, as a result of processing agreements, to get an agreed timeline for a decision. That requires pre-application discussion with communities and key agencies, so it is absolutely clear what information is required. We do not want someone to say three months into the process, "Actually, we need a traffic impact assessment," or, "Why was an environmental assessment not done?"

We really want all the ducks lined up in a row when the planning application is submitted, so there is a degree of certainty about how long the application will take to process. If elections are coming up, there might be difficulties about reaching decisions. There might be difficulties organising committees over the summer months and a special committee meeting might have to be held. There might be a requirement for a section 75 agreement on planning obligation and the application might have to come to the Scottish ministers. It is about getting a shared understanding of timescale, rather than saying, "It will take as long as it takes. We might consult communities, but we might not."

The objective is to improve the quality of service to the development industry and communities and to introduce greater certainty in the process. That is the hallmark of a modern planning service. The situation will vary a lot. An authority with a small number of applications might be able to deal with them efficiently, but there might be a surge of applications in areas such as the capital city or West Lothian, where the authorities will have to reach decisions on how they manage a significant volume, because there will be peaks and troughs. It is about project planning, managing the resources of the planning department efficiently and not under-promising or over-promising to communities or the development industry.

Mary Scanlon: That was helpful, but I am surprised at the figure £40,000. Do you see the planning fee operating on a pro-rata scale relating to the worth of a development? In other words, if it is to be self-funding, as Euan Robson mentioned, so that planning departments can get more resources from the fees, can you envisage certain situations in which the figure would be considerably more than £40,000?

12:45

Jim Mackinnon: In building standards, the fee is directly related to the cost of development, and planning officials have certainly looked enviously at that relationship. We are reviewing the scope of what requires planning permission, so we have to reach decisions on the proportion of applications that we think are major and on whether we should make a difference between a major housing development and, for example, a major minerals application. Also, some material will fall out of the system as a result of the review of permitted development. We want to get a better understanding of how things will shape up.

Just as planning authorities subsidise the processing of major applications, there is a feeling that they make a slight return on processing very small developments. As we progress the reforms through secondary legislation and consider what requires planning consent, we will get a better feel for that, but one possibility is to link the fee to the cost of the development.

Mary Scanlon: That is helpful.

The Convener: The final question relates to part 10, which makes numerous minor amendments, particularly to ensure that the language that is used is the same. It also introduces changes to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Can you give the committee some details of what the impact of those changes will be?

Tim Barraclough: There are two principal changes. Section 49(3) is critical, because it widens the Scottish ministers' ability to give grants or loans for applications in any conservation area, rather than just those that have been designated as outstanding. It removes the distinction between outstanding and ordinary conservation areas and allows a wider scope for grant funding in those areas.

Section 49(4) is also important. I do not have a cold, but the answer is Shimizu. It solves the problem of a well-known legal decision known as the Shimizu decision, in which it was held that the partial demolition of a building was not equivalent to the demolition of a building, and that consent would be required only for the full demolition of an entire building. We want consent to be required even for partial demolition of a protected building, and section 49(4) ensures that consent is also required when partial demolition is proposed.

Mr Home Robertson: I have a question about the format of the bill, which is a major piece of legislation. In effect, it is a new planning act for Scotland, but that is not the way in which you have approached it. We are not repealing the old legislation and putting a new act in its place: we keep referring to a series of amendments to the existing legislation, which will be a bit of a problem for us and a bigger problem for people who have to work within the framework in the future. Is it your intention to produce a consolidated document—a clearly written single document that everyone will be able to read and understand without having to refer backwards and forwards?

Lynda Towers: In an ideal world I am sure we would. Such a move would clearly have resource implications for the Development Department and for us in Legal and Parliamentary Services. Luckily, there are a number of planning publishers who will produce an up-to-date copy, but no decision has yet been taken about whether there will be a consolidated version.

Mr Home Robertson: That is unfortunate. It will be difficult for us, for people who make representations about the bill and for people who have to live within its framework in future if everybody needs copies of two or three different statutes to which they must cross-refer. We will have to do better, will we not?

Lynda Towers *indicated agreement*.

The Convener: That is perhaps a question for the minister rather than for his officials.

Christine Grahame: I may have got this wrong and will probably regret saying it, but I thought that the whole bill was an amendment of a principal bill.

Lynda Towers: Yes.

Mr Home Robertson: No.

Christine Grahame: That is all it is, so it is not really a case of consolidating statutes. The current bill just amends an act and then becomes redundant, in a sense, because everything it does amends an act. If you just reprint the act with all the amendments in this bill in it, it would be fine. Is that right?

Lynda Towers: No.

Christine Grahame: That is the problem with it, though: it is just a great big amendment to an existing piece of legislation.

The Convener: Perhaps we can pursue that issue with the minister when he comes before the committee.

I thank the officials for attending and for spending so much time with us.

I suspend the meeting briefly, to allow the witnesses to leave, before we consider agenda item 2.

12:50

Meeting suspended.

12:51

On resuming—

Planning etc (Scotland) Bill (Witness Expenses)

The Convener: Item 2 relates to witness expenses for the Planning etc (Scotland) Bill. The committee is invited to delegate to me, as convener, responsibility for arranging for the Scottish Parliamentary Corporate Body to pay, under rule 12.4.3 of the standing orders, any witness expenses that arise during the committee's consideration of the bill. I should add that, in the event of my rejecting any claim, the matter would be referred back to the committee for its consideration. Does the committee agree to the delegation?

Members *indicated agreement*.

Meeting closed at 12:52.

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