COMMUNITIES COMMITTEE

Wednesday 25 January 2006

Session 2

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CONTENTS

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COMMUNITIES COMMITTEE
3rd 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 ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Ann Faulds (Royal Town Planning Institute in Scotland)
Richard Hartland (Scottish Society of Directors of Planning)
Andrew Robinson (Scottish Planning Consultants Forum)
Steve Rodgers (Scottish Society of Directors of Planning)
Graham U'ren (Royal Town Planning Institute in Scotland)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Communities Committee

Wednesday 25 January 2006

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

Planning etc (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): I open the third meeting in 2006 of the Communities Committee and remind everyone present that mobile phones should be turned off. We have received apologies from Scott Barrie, Christine Grahame and Tricia Marwick, who are all unable to attend. I welcome Sandra White, who is here as a substitute for Tricia Marwick, and Jackie Baillie. Mary Scanlon hopes to arrive shortly; she has a personal engagement and will be slightly late.

Item 1 on the agenda is consideration of the Planning etc (Scotland) Bill at stage 1. The committee will hear evidence in a round-table format. I welcome the witnesses: Graham U'ren is director and Ann Faulds is a legal associate member of the Royal Town Planning Institute in Scotland; Richard Hartland is chairman and Steve Rodgers is a member of the Scottish Society of Directors of Planning; and Andrew Robinson is chairman of the Scottish planning consultants forum.

This is the first round-table discussion that the committee is holding as part of evidence taking on the Planning etc (Scotland) Bill. Members of the committee intend to ask a number of key questions to provoke discussion. To facilitate the session, I ask everyone to indicate to me if they would like to speak. That will help to maintain order and will enable us to cover all the important points that we want to deal with.

I will kick off the discussion. The Scottish Executive held various consultations in preparation for the introduction of the bill. Were your organisations engaged effectively? Perhaps you can tell us about the extent to which you were able to have an impact on the legislative proposals that we are considering.

Graham U'ren (Royal Town Planning Institute in Scotland): In general, we are satisfied with our engagement. My first observation is that the series of consultations to which you refer started quite some time ago, in about 2000, when the Executive decided to go ahead with a review of strategic planning. That opened the door to everything that followed. A hierarchical process was adopted that started with the big picture and worked down to the detail. In our experience, that approach engendered a far more successful debate and far more engagement than was the case with the English green paper that led to the Planning and Compulsory Purchase Bill. The exercise that was carried out on that seemed to be rather rushed—our institute at national level certainly felt that no one had sufficient opportunity to thrash out some of the issues. In general, we are highly satisfied with the consultations that have been held on the Planning etc (Scotland) Bill.

At the beginning of the process, we commissioned a research report on the principle of the national planning framework, which we submitted to the strategic planning review. We like to think that proposing such a concept was helpful. We have made contributions in various other ways and, in general, have been quite satisfied with the process.

Richard Hartland (Scottish Society of Directors of Planning): I can confirm that we, too, have been satisfied with the consultations. A great deal of credit needs to go to Jim Mackinnon in the Executive for developing the relationship between the Executive, the heads of planning and the Scottish Society of Directors of Planning. Much of our discussion will revolve around inclusion in the planning process. There is certainly more inclusion in the development of policy and advice on planning. We are grateful for that and think that the profession is all the better for it.

The Convener: I have a question about culture change. The Executive's proposals suggest a need for change in the culture of the planning system. As professional planners, how do you think that that change will be effected? Will the bill allow for such change? Are you up for the challenge of culture change and do you want to be part of it?

Richard Hartland: The society feels that such change is crucial to the success of the bill and to effective community engagement. It is interesting that when we first heard of and started debating the concept of culture change, all the planners thought that it was an issue for the developers and communities, whereas all the communities thought that it was an issue for the developers and the planners, and so on. In fact, all participants in the planning process need to stop and consider how they engage with the other parties.

It would be easy to oversimplify matters, but two points strike me. The first is that I suspect that the planning profession—especially the local authority planning profession—does not understand the economics of the development process and that we are therefore open to criticism about causing unnecessary delays without realising their full implications. Secondly, we are building our community engagement over time, as we learn

some painful lessons. Community engagement has been done not on communities' terms but on our terms. We need to bridge the gap and find a much better balance.

I call it planning pomposity: we come out of university thinking, "We have university degrees in planning and people in the communities don't." We think that we know everything. We need to get away from that way of thinking and be able to say, "We know a lot but not everything about planning." If we do that, we will engage much better with communities.

Graham U'ren: I echo the point about culture change being for everyone. We were slightly concerned when we saw the wording in the panel "Culture Change in Planning" on page 30 of the white paper, "Modernising the Planning System". Many people took the wording to mean that it is all about planners changing, but I do not think that it was intended to be taken in that way.

I entirely agree that the planning profession wants to take up that obligation. Although culture change is very much about our ability to persuade others on the issues—I am not sure that "persuade" is the right word—it is also about every stakeholder recognising the need to work together.

People will work together to effect culture change only if a political lead is taken. The Executive has done that by introducing the legislation but I am also talking about the nature of the debate as the bill goes through Parliament. The Communities Committee has an important role to play. If it raises people's aspirations of what planning is supposed to do, and then expects the rest of us to follow, it will give everyone a useful model to adopt. We are very much up for that.

The whole business of culture change has to be understood and supported fully. The RTPI has established a culture change task group. It is early days, but we acknowledge that the subject matter is hard and will remain so unless and until we get all the stakeholding interests around the table and say with one voice, "We are up for making a change."

The other problem is that we will not know that the culture has changed until we get there. There will be a transitional period between making the new act and secondary legislation and preparing the strategic and local development plans under the new regime—particularly for authorities that require to come together in new forms. The institute worries that we may not see those plans for another five years, which means that recipients of a plan, the wider public and other stakeholders will not get a chance to see the difference in the formal process for quite a number of years.

The question is: what can we do in the meantime to engage everybody? We need to be asking what we are aiming towards. We all need to understand what we want to see before we get there. If we want to engage people, we cannot afford to wait.

Andrew Robinson (Scottish Planning Consultants Forum): As a planning consultant, I act in a voluntary capacity for community groups where I live and elsewhere in Scotland. There is a large degree of bafflement, misunderstanding and confusion on the part of affected community groups about how the planning process is run and about the fact that many of the big decisions that affect communities are taken at a level that appears not to allow proper public access to and understanding of the process. The forum discussed the issue at some length; that debate has influenced our view of the bill.

Steve Rodgers (Scottish Society of Directors of Planning): A key question is whether the bill can facilitate or enable a change in culture. I have reservations about whether it is possible to legislate for such a change, but it would be possible to encourage it. First, if the bill establishes a positive and proactive role and purpose for planning—which I think it will—that will re-energise everybody involved in the system. Secondly—this links to the point that Andrew Robinson just made—if the bill simplifies processes and procedures and makes the planning system clearer and more understandable to those who engage with it, that will help to encourage a more positive culture.

In our view, the system is extremely complex, bureaucratic and overly legalistic. One challenge will be to simplify matters. The bill must get us out of the quagmire that we often find ourselves in: a legal process in which staff feel as though they would be better off if they retrained as lawyers rather than planners. We should clear things out and create a proactive, positive role for planning, which is about creating positive and appropriate development in appropriate locations. The system is not about protecting private property interests or saying no to everything. If we can achieve those aims, it will create the conditions for a much more positive type of engagement, which is what we all want.

09:45

The Convener: Ann Faulds is a lawyer. Do you have anything to say?

Ann Faulds (Royal Town Planning Institute in Scotland): Culture change is a crucial factor in the debate. I have had about 20 years' experience of acting for public and private sector organisations. Delay in the system is a continuing concern for developers on both sides of the fence and causes adverse impacts on economic growth and

development whether the project is a big commercial development or a school or hospital public-private partnership. The time has perhaps come for that cultural change to come in behind the legislation, when the public-private divide in our community is becoming more blurred anyway.

The Convener: A number of the issues that you raise will be covered in more detail as we progress through questions on the bill.

Euan Robson (Roxburgh and Berwickshire) (LD): I would like to get witnesses' views about putting the national planning framework on a statutory basis. Will the objectives in the white paper be met, not only by enacting the legislation but in practice? Beyond that, how will the national planning framework knit with the strategic development plans that are being suggested? You could begin by giving your general views on those two important matters, which are dealt with at the start of the bill. I will ask you more about the strategic development plans later.

Graham U'ren: We are strongly in favour of the principle of having a national planning framework and delighted that the bill puts a duty on ministers to prepare one. The provision is almost identical to the duty that is placed on Welsh Assembly ministers in relation to the spatial plan in Wales. It is clear that the national planning framework is not part of the statutory development plan and we would like it to stay that way.

On the business of having a statutory planning system and statutory plans, which we have talked about for many years, a national planning framework, which there will be a statutory duty to prepare, is not the same thing as a statutory development plan, which involves all the processes—the right to object and to be formally heard and so on. The framework will still be very much a policy instrument of the Government of the day. Parliamentary scrutiny—the principle of which we fully support—should lead to better-informed Government. We are happy with that principle, but inherent in your question is the point that there is much that the bill does not say about what the Parliament might do under that provision. The Parliament might want to change the provision to give it more scope to scrutinise the national planning framework and to involve more people in doing so. The bill also does not say much about the direct relationship with the strategic development plans. Any material consideration—in the legal sense—in the planning system that has a bearing on how strategic planning decisions are made will have a strong bearing on the context for the strategic development plan.

If I remember rightly, the bill talks about the need to take account of the national planning framework. That is a little different from having to conform with the national planning framework. I think that the word "consistent" is also used in the bill. There is an indication that there is not supposed to be a straitjacket with regard to what might happen at the next level. However, the bill will have a strong influence on that.

We are content with the situation because it is set out in a Government policy document, just as we are content with the Scottish planning policies. However, we think that there is still a lot to be discussed.

The idea of the national planning framework as a policy framework was well established by the first planning framework. Although it is not particularly prescriptive, it is useful as a consolidated picture of spatial policy in Scotland. We would like to see that move on a bit and have more regard to the longer term.

The new idea in the bill incorporates this business of referring to national developments in the context of the hierarchy in which approvals are dealt with. That raises many issues. The first one relates to defining a national development, which I am sure we will deal with later. Of course, that is an issue in relation to which we need secondary legislation. At the moment, the answers are not on the face of the bill.

We have to remember that national developments break down into two types. There are those that will go through the planning system in the normal way, such as a large industrial site that is regarded as a key single-user site for a specialist purpose. That might appear in the national planning framework as an ambition for a particular area of Scotland and you would expect provision for that to be made in the strategic development plan and the local plan and a planning application to be made to the authority of first resort, which would be the local planning authority. However, the other type of development relates to major infrastructure, about which there is much debate. We must remember that, even though people talk loosely about the likes of the M74 inquiry as being a planning inquiry, it is not a planning inquiry but a roads act inquiry—that is, one that is conducted under the Roads (Scotland) Act 1984—which means that many strategic planning issues are not discussed.

We have to have a better mechanism for addressing the higher-order issues when we are debating major infrastructure proposals in principle or in detail. We must put the issues into the appropriate context, which is one in which informed spatial decisions can be made, bearing in mind all the spatial implications at the national level, as well as at regional and local levels. The national planning framework has given us, for the first time, a national perspective that will allow us to do that. That is why we are keen on making the system work. It is important to be able to examine

the broad principle of major infrastructure developments in the national planning framework without prejudicing the proper scrutiny when it comes to line orders and compulsory purchase orders and the environmental assessment issues that arise when you are dealing with a specific scheme.

There is a circle to be squared. The bill does not answer all the questions. I have ranged over many issues in relation to the national planning framework, which I hope has been helpful.

Richard Hartland: On inclusion and awareness, one of my worries is that, although we are trying to bring our communities on board and to encourage them to participate in the process, the national planning framework is a top-down mechanism. The problem is not that people will be frightened by it but that they will not know anything about it. We must find a mechanism that will allow communities and the public to have a better understanding of what the national planning framework is, where it fits into the planning process and what it tries to do. A national development could be allocated to a region without being site specific, which would hand a poisoned chalice to the local authority. There is a question of democratic accountability that requires a balance to be struck.

My second worry relates to the provision of infrastructure and is coloured by the fact that I am involved with West Lothian, where the level of growth is going to be substantial. It seems to me—and this has been proved—that there is a gap between the national planning framework and the current structure plan, which may become the strategic development plan, into which will fit developments that many people think are national, as I think they are, but some people do not. I refer to motorway junctions, for example. The expansion of communities sometimes begs for motorway intersections, which have not been included in the process. Where do they fit in? Where does substantial infrastructure provision fit in the relationship between the national planning framework and the strategic development plan?

Euan Robson: That is an interesting question, which I cannot answer. However, I am sure that the committee will note your point.

Andrew Robinson: I think that there is overwhelming support in the SPCF for the concept of the national planning framework. The question whether it should be statutory must be viewed in the light of our experience of having two tiers of statutory planning over the past 20 years.

I will try to summarise our view. We believe that having three tiers of statutory planning for a nation of 5 million people would be overdoing things, particularly as each level will have its own processes. I refer to what Steve Rodgers said about overregulation and control. We have carefully considered the idea of doing away with a statutory development plan at the structural level but having the authority vested in statute at the national and local levels, because our experience over the past 20 years—we have sat through numerous public inquiries in which structure plans have been debated—demonstrates to us that that level of planning has not proved to be effective. We do not see any major differences between the proposed strategic development plan and the structure plan that we have lived with for the past 20 years.

Steve Rodgers: On infrastructure provision, one key factor that points towards the potential success of the national planning framework—which I think everybody engaged in the process welcomes—is its ability to engage in the process organisations that are currently outwith the control of the planning authority, particularly at a national level. Organisations such as Scottish Water, Transport Scotland, Communities Scotland and Scottish Enterprise must be heavily involved in the process. There needs to be a clear process of engagement and a mechanism so that future investment priorities are set in a way that reflects the priorities that are set out in the national planning framework.

Euan Robson: I want to explore strategic development plans a little further. There is concern—which has just been expressed—that the national planning framework is a top-down mechanism. Concern has also been expressed that having three statutory planning levels might be a little bit much for the public to engage with. I think that the public will understand and accept development plans, but what do you see the purpose of strategic development plans being?

For the purposes of the debate, I will express a sentiment with which I do not necessarily agree. It has been suggested that there is incoherence in what has been suggested because it does not seem that the plans will be particularly well formed. How will the strategic development plans relate to other development plans and the national planning framework? They sound as if they are a good idea, but perhaps they are not.

The bill mentions ministers deciding boundaries. Will plans necessarily need to have boundaries? Major infrastructure might straddle boundaries wherever they are drawn. Some infrastructure might fall short of a boundary or go over it.

10:00

Graham U'ren: Those are practical points. Planning policy should not be seen as an exact science, because it is more about concepts. The

concept of a region is something that has a core and a periphery. The periphery tends to bleed off from the point of view of administration and making decisions under the statutory decision-making process. We have to have administrative exactitude, so boundaries are required. I subscribe entirely to your view that at the outer limit the boundaries are less important conceptually, but we have to have them for administrative purposes.

On the need for strategic development plans, of overriding importance is the concept of the city region. In the light of our experience since 1996—indeed since 1975—strategic planning has focused increasingly on the city region. The city region reflects our ability to deal with the real market forces that affect planning, such as labour-market areas, travel-to-work patterns, housing market areas, patterns of demand in the housing market and the way in which transport systems work. Transport systems in a city region work in a reasonably integrated way. That is why some of the regional transport partnerships will reflect the city regions, although they have to cover other areas too.

It is interesting that in England people have a real difficulty with the concept of city regions, because they all overlap. That is one of the reasons why structure plans were abandoned in favour of regional spatial strategies for each of the big economic regions in England. Even that is unsatisfactory and a sub-regional approach on a city region basis with the regional spatial strategy areas is now being considered.

There is no doubt that the city region concept is important for spatial planning purposes, especially in integrating planning and transport issues. In principle, that is why we must consider a system of city regions.

Euan Robson: How does the city region concept apply to Fife? There are two cities either side of Fife. Is Fife divided in the middle? What happens to Dumfries? It could be part of the city region of Carlisle, Belfast or Glasgow. What happens to areas beyond the strategic development plan area? What happens when a place is left beyond the boundaries that have been drawn? What are we saying to such communities? How do we cope with those practical problems of geography?

Graham U'ren: In the first instance, it is an issue of geography. In other words, we must explain what exists before we plan to change it. Understanding what exists is terribly important. What existed before we bridged the firths—whether the Firth of Forth, the Humber or the Severn—was a completely different geography from what we have now. The Forth bridges mean that we cannot avoid the fact that the south of Fife is part of the Edinburgh region from the point of view of travel-to-work and housing market areas. We need an administrative process that does its best to address that. There are many issues relating to the Fife question, but we cannot get away from the geography.

Andrew Robinson: It is difficult to imagine a national framework that does not give a lot of time and space to the city regions and the sphere of influence of the cities and the region within which they sit. That is a different issue from the discussion that we have been having about the layers in the planning system.

I take the view that in the past the middle layer of the plan—the statutory development plan, which was formerly the structure plan—has acted as little more than the conduit for the passage of the housing requirement to the local planning level. If that is the purpose of the middle layer of planning, it can be achieved much more economically and quickly than by our going through an elaborate planning process for which more is claimed than it achieves in practice. One needs only to consider how the process of modifying structure plans has been handled to know that the prime issue has been for Government to ensure, through the approval process, that local planning authorities have to deliver a certain number of houses. In our view, to dedicate a level of the statutory planning system to that relatively simple process is unnecessary and leads to great disbenefits in terms of delay. It also establishes a process to which the public feels it has little access and of which it has little understanding. Nevertheless, because the strategic development plan has statutory force, the public is subjected to its outcome, through the approval process.

We have looked carefully at how the matter might be handled and would prefer housing demand to be dealt with at a very competent local level of planning. We do not want time to be spent unnecessarily at the statutory level. That is not to say that we want to chuck strategic planning out of the window. We can see different ways of handling that that are more transparent and better understood by the communities that are affected. We envisage the national planning framework evolving in a way that will allow that to happen. However, we believe that there is a big question mark over structure plans and the strategic development plans that are intended to replace them.

Steve Rodgers: I would like to offer a slightly different perspective on the possible role of strategic development plans. I welcome their introduction and go along with the notion that they are a good idea. Graham U'ren spoke about the need for us to plan on a city region basis. That approach has been developing for many years and we have an opportunity really to get to grips

with the requirement to plan strategically on a city region basis. Inevitably, there must be boundaries—there is no way around that—but that is not necessarily a bad idea. What is important is how we draw those boundaries to ensure that they reflect the true sphere of influence of the city region.

Andrew Robinson asked why we should bother having a strategic development plan. In my experience, structure plans and strategic plans are about significantly more than simply allocating targets and locations for private sector housebuilders. In the west of Scotland, we have been involved with the Glasgow and Clyde valley structure plan, which I commend to members of the committee as an example of the positive work that strategic planning can do to revitalise and regenerate communities. Without the strategic framework that the structure plan provided, it is questionable whether the amount of new development and redevelopment that is on-going and planned all the way along the banks of the Clyde would have happened.

Eight authorities are involved in the preparation of the strategic framework for Glasgow and the Clyde valley, and the strategic development plan, or the structure plan, as it is currently called, has enabled us all to take a strategic view of the conurbation and the area around it and to agree on matters such as strategic green-belt areas that need to be safeguarded and protected; strategic business locations that require further investment from authorities and agencies; and a retail hierarchy for all city centres and town centres. It is about a lot more than simply considering future housing and population requirements.

The plan has also enabled us to focus on identifying priorities for regeneration. That has proved to be quite a powerful tool for engaging with the likes of Scottish Enterprise and the Scottish Executive on issues such as derelict land. There remain huge derelict land issues across large swathes of the west of Scotland, particularly in parts of Lanarkshire and in Glasgow. Without the strategic context that the structure plan was able to provide, I do not think that we would have been able to put such a positive and convincing case to the Executive for additional resources. Strategic development plans are about a whole lot more than simply looking into housebuilding pressures and where they can be accommodated.

Euan Robson: You made an interesting point about strategic development plans being a mechanism for attracting resources. Some might say that places outwith the areas concerned might not have the opportunity to attract such resources.

Steve Rodgers: The bill proposes to establish what are effectively two different approaches in different locations. In some parts of Scotland, we will have a three-tier system, with strategic development plans as well as local development plans. In those areas outwith the city regions, there will be local development plans. The bill, like the white paper before it, makes it clear that those local development plans applying to areas outwith city regions will still contain a strategic component.

There will be a requirement for what I would call strategic planning activity to take place in the Highlands and Islands, for example, where we could not conceive of having one single local development plan covering the whole of that vast area without there being a strategic context overlaying that. That sort of strategic planning activity will, in my opinion, still have to take place.

Euan Robson: I want to round off our discussion on this particular topic, because we have several others to cover. I wish to ask you about your views on the proposed method of developing and approving the national planning framework. Do you find it satisfactory? How do you see the process developing? What are its key components?

Richard Hartland: There is a critical link between the national planning framework and the strategic development planning mechanism. The national planning framework should demonstrate an understanding of the dynamics of the Scottish economy.

We have been talking about city regions. A vast number of people live in a two-city region called the central belt and it would be false to divide that, although I agree that we have to have administrative boundaries that carve up Scotland for the purpose of running it. The new Bathgate to Airdrie railway will change the dynamics of the Scottish economy to an extent, and we must take that on board. We need to consider the relationship between strategic development planning and the regional transport partnerships. There should be a much closer match there.

The secret of all this—which can perhaps be explored further with respect to the national planning framework—lies in cross-boundary relationships. It is not necessarily about what happens within a city region, but is to do with the dynamics of how city regions and areas between city regions affect each other. I will give a simple—almost simplistic—example. We in West Lothian were very proud to have brought Motorola to Bathgate. Not long before the factory sadly closed, a study was carried out on where the people employed at Motorola lived. It turned out that the vast majority of them lived in North Lanarkshire. We had been beating our chests, thinking, “Well done, West Lothian,” but it was almost as much a North Lanarkshire success. That is parochialism, but the point is that we need to consider the much broader dynamics of the economy and its

relationship to all areas. Cross-boundary relationships are almost as important as what happens within the city region.

10:15

The Convener: We will return to some of those issues when we consider other sections of the bill. At this point, perhaps it would be best to move on to part 2, on development plans.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): We have touched on development plans already, but I ask our expert witnesses for some further thoughts. The Executive's policy objective is for strategic development plans to be brief, clear and more focused than structure plans. Will the bill's proposals for development plans achieve the objective of making the planning system fit for purpose?

Graham U'ren: I will start because the question needs an answer, although how it was put makes it a difficult question. I have no doubt that the Executive, and all those who are keen on planning reform, believe that the bill is a good attempt to make the planning system fit for purpose. The term "fit for purpose" covers both inclusiveness and efficiency, both of which are needed in the system. The bill is a good effort. We are certainly interested in its objectives, but the system's fitness for purpose also depends on other aspects of planning reform. It is not just about the bill. How we manage and resource the system, tackle culture change and encourage everybody to be involved in what we are trying to achieve is also important.

You asked specifically about strategic development plans. It is important for those plans to be more streamlined. In the days when we had two-tier local government, there was a tradition of the higher tier tending to do more than it needed to do, but that was due to political aspiration rather than the needs of the system. There have certainly been some changes since then. We strongly support the aim that strategic development plans should be slimmer, that they should be appropriate to the concept of city regions and that, beyond that, decision making should be subsidiarised to local planning and to the local authority in the first instance.

We talk about a three-tier system, but in many areas of policy there is potential to leapfrog the middle tier. For example, strategic development plans will need to have regard to environmental policy, but they need not be terribly prescriptive because environmental policy can be dealt with perfectly adequately—according to the guidance and the Scottish planning policies of the day—in the local development plan. We must avoid the repetition of the same policy set all the way through the hierarchy. That is not necessary, and avoiding it should be another feature of the more streamlined approach to strategic development plans.

Cathie Craigie: I know that planners, and everyone involved in the system, welcome the opportunity to examine the planning legislation. We do not get the opportunity to do that very often, if past experience is anything to go by. You said that the bill is a good attempt to make the process fit for purpose. If it is just a good attempt, how can it be improved?

Graham U'ren: In fairness, although we might believe that certain aspects of the bill should be changed, it is generally fine and is probably the best that we can do as a legislative package. However, the real issue is what else we can do to manage the system to ensure that it delivers. We will constantly repeat the message that a bill is not everything when it comes to planning reform because that is the most important point that we can make; many other areas are involved in management. As a profession we can, with our members, improve the training and practice development issue as well as improve networking, the relationship with other sectors and, indeed, our work alongside politicians in community engagement. Without placing planning at the top of everything, I hope that we can ensure that planning is an accepted and respected part of everyday life, in which everybody works together. We must try to deal with the problem of public understanding. All those things will happen not because of the bill, but because of better practice.

Ann Faulds: From a legal perspective, the bill is a good attempt. Of course, we have still to see the secondary legislation and the guidance that will come from the Executive. All that will make the legislative package that will affect how the bill will operate in practice. What is also good about the bill is that it not only has the correct focus on strategic and local planning, but local authorities will have flexibility to react to emerging issues through supplementary guidance. The economy can move quickly and unforeseen issues can arise.

As the current national planning framework says, planning and transport are inextricably linked. We will have national and regional transport strategies and we must keep an eye on how those link to the development plan process because people will be confused if two separate Executive departments cascade policy. They have to knit together somehow.

Andrew Robinson: I would hate it to be thought that what I said earlier was in any way an attack on strategic planning and thinking, which is a critical part of any planning system. My point related to Steve Rodgers's earlier point regarding

the relationship between statutory levels of planning and whether we need to embrace the strategic thinking level at a statutory planning level. There is no doubt that the force of law behind that level of planning absorbs considerable staff time in planning departments throughout the land. That takes concentration and limited staff resources away from the all-important interpretation of national and strategic planning issues at the local level. It is at that level that the planners come into their own in terms of serving the community and interrelating the different pressures that can be planned for only when they hit ground level. The actual planning at community level does not manifest itself until issues are reflected on the ground. The understanding of people and community-based groups relates to that level. No part of anything that I say should be construed as an attack on strategic planning, which is essential.

The Convener: We intend to return to the subject of strategic planning. Ms White has questions on it.

Steve Rodgers: Just to respond to the point about whether the proposed strategic development plans are fit for purpose, an aspect of that is public engagement. The bill proposes introducing a requirement for further public scrutiny of strategic development plans through the process of examination in public. It is critical that that process is regarded as an opportunity for the person who is appointed by Scottish ministers to inquire and establish information to determine whether a strategic development plan is appropriate and should be approved. In other words, there should be a strong hint in the bill that we are trying to move away from an adversarial public inquiry approach, in which the real issues tend to be obscured by Queen's counsels who are far cleverer than me and my staff, for example.

If the public feel that they can actively participate in an open decision-making process, they will relate to it. The current formal approach to public inquiries has the effect of excluding many people who would otherwise want to be involved. If the legislation is to be fit for purpose, we need to look at how the public is engaged in the process and at how such examinations in public will be conducted. I appreciate that those processes will be the subject of further and secondary legislation, but a clear steer should be given that they should be simplified and made less adversarial than they are.

Cathie Craigie: That is a useful point to underline.

A statutory duty will be placed on agencies to engage in the plan. Will that improve the deliverability of the plan for local authorities?

Richard Hartland: That is critical, and part and parcel of it will be the culture change. Of course our service and infrastructure providers must be party to the dynamics and objectives of a strategic development plan, but it must be about comprehensive participation at an early stage. Ultimately the development planning process will have a five-year cycle and we will be charged with producing local development plans in that cycle. If the culture does not change to allow the infrastructure providers to participate, and—emphasising Steve Rodgers's point—if we do not find a mechanism for encouraging better, but shorter and sharper public engagement, we will not deliver a five-year development plan cycle. We could not, because the mechanism would not allow us to do so. The service providers must be brought on board at an early stage and there must be early engagement with the public, and local authorities are not good at that; they and we have to acknowledge that they are not good at that. However, if we do not get it right, we will take too long to get the end product of a strategic development plan, which will mean that we can never deliver a five-year cycle and the public will lose confidence.

Mary Scanlon (Highlands and Islands) (Con): At our excellent meeting in West Lothian on Friday, some of your colleagues raised the point that under the provisions of the bill, ministers can name officers to head up the strategic team. That is under the proposed new sections 4(3)(a) and (b) of the Town and Country Planning (Scotland) Act 1997. Some directors of planning were concerned that officers would be named by ministers and that that does not happen under any other legislation in Scotland. Could you comment on that?

Richard Hartland: Yes. I cannot envisage the mechanism of ministers appointing at that level. It is surely for the local authority to appoint those officers. A further complication should be borne in mind. In many instances, we do not see the need for a permanent strategic planning team. For example, the Edinburgh and the Lothians structure plan was not drawn up by a permanent team. The team worked full time on the structure plan, but they had other jobs to do on the local development planning process. That worked well, even if it took too long and was made a bit cumbersome through other legal procedures. I cannot see that ministers can appoint individuals in a planning process that will be run by local authorities.

Patrick Harvie (Glasgow) (Green): I would like to go back to what was said about the examination in public being an attempt to achieve a level of positive engagement rather than take an adversarial approach. Why should we apply that principle only to the development plan and not to the national planning framework? The framework

may, as we discussed, include specific developments or specific proposals.

10:30

Richard Hartland: The adversarial approach has to be taken out of the planning system. Public inquiries have, in my experience, been rather ineffective. They are very intimidating, and the public will not become involved in them because they think that they would be out on a limb. If a QC is appointed by one party, all parties feel that they should appoint a QC, but good legal direction does not necessarily have to come from a QC.

My early experience of public inquiries was that a QC stood on his feet, put his thumbs underneath his braces and said, "We are here to get to the heart of the matter," only to spend three days avoiding the heart of the matter and intimidating a poor little planning officer.

Mr John Home Robertson (East Lothian) (Lab): Name names.

Richard Hartland: I call tell you who the poor little planning officer was.

Patrick Harvie: I am asking about the difference in treatment between development plans and the national planning framework: provision will be made for examination in public for one, but not for the other.

Richard Hartland: The critical point is that examination in public has to be available at all levels, and must be tailored to the purpose and function of a plan. I suspect that third parties will not be so involved at the national level, as different players will be involved at that level. Third parties will be much more involved at a more detailed level. If a national development is required in a certain area of Scotland, I do not think that people will say at that stage that such a development should not be beside them. They will voice their opinions at a more local level in the local development planning process. Each means of public inquiry or examination has to be geared to a different audience and to the different functions of plans.

Graham U'ren: Patrick Harvie's question is very difficult to answer. According to the bill, responsibility for the national planning framework will be handed to Parliament, with a 40-day period for consideration. However, the bill cannot say what Parliament should do with the framework; that will be up to the Parliament. The big question is whether the Parliament would want to conduct an examination of the framework in an inquisitorial rather than in an adversarial way. However, the Executive has not made a proposal about that, because the matter is with the Parliament.

In its response to the white paper, the Royal Town Planning Institute in Scotland said that the framework should come before the Parliament. Not understanding the niceties, we said, in our naivety—perhaps we expected this to be in the bill—that the Parliament should appoint commissioners to hold an examination. The examination could be done with a very light touch but still have independence and technical expertise and be accessible to everybody. The examination would then be reported to the Parliament to inform any debate that it wanted to have.

If commissioners are to be a serious option, it is for the Parliament to appoint them, as provision for such appointments cannot be made in the bill. There is a debate to be had on the matter. We are waiting to see how the Parliament would like to deal with it, and then we could help you to shape something. The principles would be the same: there is no reason why the national planning framework could not be tackled in broadly the same way as the strategic development plan. However, this is still not about statutory objectors or about the plan's status in the development plan and all the niceties and legal challenges that go with that. It is about having as open a debate as possible about the real issues; that is the nub of the matter.

Cathie Craigie: We discussed that issue in some detail last week with the witnesses from the universities, and I am sure that we will spend more time discussing it before we produce our stage 1 report.

In answer to my question about other agencies, Richard Hartland raised the issue of the lifespan of the development plan. Many of us feel strongly that, under the existing system, local plans can be years out of date and so do not serve the public or economic growth well—in fact, they serve nobody well. We are keen for plans to have a realistic lifespan that is achievable for local authorities. From Richard Hartland's response to the previous question, do I take it that placing a statutory duty on agencies to engage in the process will help to achieve the five-year lifespan? Will any problems prevent five years from being an achievable goal?

Richard Hartland: Getting participation right with service providers and stakeholders can only help, because people will understand earlier what can and cannot be done. We live in a world in which local plan applications for development cannot be serviced. That is a rather preposterous situation to be in given that we are talking about the concept of a co-ordinated planning system, but that is where we are. We need to unlock that. If the plan is pitched at the right level, it can clarify the matters for debate at subsequent levels. A public inquiry could have much more focused participation, because the local development plan would have sorted out many of the more strategic issues.

Cathie Craigie: Difficulties in delivering what is in a local plan arise if, for example, Scottish Water is not engaging with the local authority to assist in providing the infrastructure to allow a development to proceed. Scottish Water could walk away or delay progress for a long time. Will the statutory duty to be involved help?

Richard Hartland: That will help, because there are other means of providing infrastructure. If Scottish Water cannot provide the infrastructure, the developer or a consortium of developers may well be willing to do that in order to put the development in what the community and the local authority feel is the right place.

That takes us into another debate about finance and resources. We are doing a lot of work on that, particularly in West Lothian, in what we identify as core development areas, where the infrastructure needs happen to be not for water and drainage, but for the provision of road linkages, new roads and schools, and the work has to be funded by the developer. Those are not planning gains but planning necessities. If we do not provide, development will not happen.

We must be careful about the mechanisms for providing. The secret is to realise or appreciate the true land values of development. A debate is opening up about the planning gain supplement—perhaps that is for another time or for later today—and about how we introduce that mechanism. A lot of work is being done throughout Scottish planning, particularly in West Lothian, on putting in place the infrastructure. As I said, there are other means of providing the infrastructure. All the parties must understand that, including the parties that might not be able to provide the infrastructure.

The Convener: Ann Faulds has patiently waited to speak.

Ann Faulds: The Transport (Scotland) Act 2005 imposes a duty on local authorities and health boards to take into account the regional transport strategy when exercising their functions. If a hospital wants to devise a car parking policy, it must think about the regional transport strategy. I wonder whether it would help if Parliament imposed a similar duty on key agencies to take into account the development plan in exercising their functions.

Mr Home Robertson: I will resist the temptation to follow that up, although planning for car parking at the new Edinburgh royal infirmary has not been a triumph of planning policy in recent years. I will not go into that.

I will continue the theme of development plans. What will be the role of action programmes in implementing development plan policies? For example, is there any hope of reducing the complexity and volume of development plans? They are pretty Machiavellian just now. What about neighbour notification?

Steve Rodgers: I will have a bash at answering that. The concept of action plans is welcomed by most of us who are engaged in the process. One of the main benefits of action plans is that they will focus attention on the delivery of key elements of the plans, instead of plans being seen as policy documents that are put on the shelf and are used simply as a basis for making decisions on planning applications. The development plan system is about a lot more than that; it is about the proactive and positive role for planning that we have been talking about. I welcome the introduction of action plans as a way of ensuring that we have that focus.

Mr Home Robertson: Is that system going to simplify the documents that Joe Public and the rest of us will have to try to digest and understand?

Steve Rodgers: Whether it will simplify the documents is another matter. The bill proposes that, in addition to the plans, we will have to produce a development plan scheme that sets out a timetable for the production of plans. We will also have to produce the consultation report and publish a strategic environmental assessment, which is an appraisal of a plan's environmental aspects. Whether all those things will make the system any easier for members of the public to follow is open to question. However, we have a duty to try to simplify, as far as we can, the content of our plans in relation to the type of policies that they include and their ambitions. I do not think that we should regard local development plans as a vehicle for trying to cover absolutely every eventuality within a locality; they have to be more streamlined and focused. I am convinced that there is a role for the Scottish Executive to play in helping to achieve that by providing clear guidance. For instance, the white paper talked about introducing model policies that we could all use. That would help to simplify the content of the plan.

Mr Home Robertson: Does anybody else want to comment on that?

Graham U'ren: The issue has been a hobby-horse of mine for a long time. In 60 years of our planning system, the attitude has always been that local authorities should produce plans entirely at their own discretion. In terms of fitting their content to their areas, that is absolutely right, but there has been little standardisation of the style of the plans and the procedures that are followed. We are only just waking up to that, and the whole business of e-government and e-planning has led to a lot more comparing of notes about how we do things. That has flagged up the huge variety of approaches that people take, although, to a large extent, the

way in which policies are written means that there is no need for such variety.

The situation can be confusing when one takes an across-the-country view. Also, until relatively recently, people have not benefited enough from comparing notes on practice in writing plans and policies. Again, we cannot legislate for that but we can do an awful lot more in practice development and in how we manage the system to make development plans far more accessible. I do not think that that has anything to do with the bill. The positives of the action programmes are huge: they are part of the discipline.

Under the bill, key agencies will have an obligation to co-operate in the preparation of the main issues reports and the development plan. They are not mentioned specifically in relation to the action programmes, but perhaps that is something else that we could consider. If their co-operation is secured at the first level, perhaps secondary legislation could deal with the matter. The point that we discussed before, in relation to infrastructure, about key agencies working closely all the way through the process applies to the production of action programmes as much as—if not more than—it applies to anything else. That is the point at which one can prove that a better and more integrated planning system is producing the fruits that get over the problems that Richard Hartland was talking about. The action programmes are important.

A two-yearly review or update of the action programme would provide a superb opportunity to monitor the overall progress of the plan. Monitoring is something that we need to examine more closely. We must constantly tell people what the plan is achieving or not achieving and what may have to be done. Having a clearer understanding of that is an important part of the process of implementation and monitoring.

10:45

Richard Hartland: A number of points follow from that. The first of them brings us directly back to the question of complexity, and I believe that we have a responsibility, as part of the culture change, to make the local development plan much simpler. There are two or three elements to be considered. For example, I favour a loose-leaf document approach. If something has not changed, we should not need to re-examine it or to search our souls to redefine policies, but that is what we do. The other worrying point is that it seems that there is never a good time to do a development plan. We need to appreciate and be aware of forthcoming changes in policy. If we were aware of the Executive's priorities, through the Parliament, for policy changes, we could anticipate those changes and regulate our development plan mechanism to account for them. Too frequently, we have almost achieved the writing of the development plan, only to find that we have been given a new policy. We do not have to start again if that happens, although we have to re-examine our position. We need to get away from that approach—we need to be able to anticipate changes and write them into the system.

I must make a point about the complexity of the development plan, the speed of the plan and the explanatory notes to the bill, which say that we want the system to be simple. There are mechanisms in the bill that will make it simpler, but there are also mechanisms that will make it more complex. Around the table, we are saying that the action plans are good, that strategic environmental assessment, sustainability and accountability are essential and that there must be community engagement, reporting on community engagement and neighbour notification. Those are all good things, but we can achieve the five-year process only if that work is resourced. Inevitably, we will be thinking about how we can achieve all those good things within that cycle given that we have struggled to consider less within the same cycle. Essentially, it comes down to the resources that we put into formulating and processing the development plan.

Mr Home Robertson: What are the resource implications of that aspect of the proposed legislation?

Richard Hartland: I was asked that question yesterday by my chief executive.

Mr Home Robertson: Surprise, surprise.

Richard Hartland: I could not answer it then, and I will not pretend to be able to answer it today. I do not think that we will know what the resource implications are until we see the secondary legislation, which will say exactly how those things need to be done. However, I suggest that, in the immediate term, the resource implications will be quite substantial. The bill claims to be able to streamline the planning mechanism and therefore to make it more efficient, and there may be something in that in the long term. However, we will have our work cut out if we are to achieve all those things in the short term, and I am worried about resourcing that.

Mr Home Robertson: We shall probably hear more about that as we go on.

I would like to ask about a specific area that is likely to be identified in development plans. It is something about which I have a bee in my bonnet in relation to my own constituency: the provision of affordable rented housing. The development plan may identify such a need, but the people who own the land inevitably tend to want to maximise its value, so affordable housing is difficult to deliver.

Is anything else required in the legislation to make that deliverable? It is one thing to express the aspiration for more affordable rented housing in a certain area, but it is another thing altogether to ensure that it is delivered. I would like to take advantage of this session to see whether the witnesses have any bright ideas about delivering affordable housing.

Steve Rodgers: The current set-up allows us to address the issue using the planning advice note on the provision of affordable housing that the Executive produced fairly recently. It suggests that we should include in our local plans specific policies to require the provision of affordable housing.

Many of us have been working on developing supplementary planning guidance. Rather than wait for the next round of development plan reviews, we have pushed ahead and introduced supplementary planning guidance that obliges developers to require, as the planning advice note suggests, a minimum of 25 per cent affordable housing. It is up to the local authority, in consultation with local stakeholders, to determine priorities for that housing. As you are probably aware, the PAN's definition of affordable housing covers not only social rented housing but low-cost home ownership and equity sharing. It is up to local agencies to determine, in consultation with organisations such as Communities Scotland, what their local housing market priorities should be. Those priorities vary across the country. Indeed, affordable housing is not a universal issue in itself; it is concentrated in some areas. For instance, East Renfrewshire, where I work, is probably a classic example of an area that experiences affordable housing pressures. The mechanism that I have outlined is the way that we have chosen to work on affordable housing. We have recently approved supplementary planning guidance to ensure that we achieve some of our local housing strategy targets.

Mr Home Robertson: Your mechanism works for developments from which one can take 25 per cent. For example, 25 per cent of a private development may become affordable rented housing. However, if you are in an area in which land is not being released for housing and in which there is a need for affordable housing, you are in a bind. However, I suspect that we will come back to that another time.

Will the increasing opportunities for the public to be included in the preparation of development plans achieve the objective of involving local people and reducing the number of objections? I am sure that my constituency is not unique in experiencing situations in which there was supposed to have been a lot of public debate about a local plan. Inquiries took place and a development plan was agreed, after which it was decided to release a chunk of land for housing in one or more villages. However, nobody noticed it, and once the planning application came in after the stable door had closed, as it were, everybody cried foul saying that they knew nothing about it. Will the new system work any better or will people still be in the dark until it is too late?

Richard Hartland: A critical factor, which is again a matter of culture change, is that in the past, and probably at present, the community was consulted on the local plan. The secret is to consult the community and engage it in the formulation of the local plan. Therefore, by the time that the community sees that the plan has some meat on its bones, it is not perceived as an end product. That has been done successfully in some areas in Scotland. Communities have been approached not necessarily with a blank sheet of paper but with what the requirements and options might be. Those communities are then engaged in selecting those options. The end product is formed from a consensus. That makes it much easier to go through the public inquiry process, adopt the plans and then make the decisions on the resulting planning applications.

Mr Home Robertson: I hope that you are right. The public inquiry is almost a contradiction in terms. There is precious little public engagement in a public inquiry; all too often it is a dialogue between professionals and lawyers. We all share the objective, but we are striving for a way to make it happen.

I am not sure whether anyone else wants to say anything about this.

Andrew Robinson: I take your point about the time lag in understanding. That happens repeatedly. I do not think that there is any panacea, but a great burden of responsibility lies with local elected representatives. They must constantly, and in obvious ways, engage their communities in the debate about the issues in their formative stage and later when they develop.

We all know that, once the planning process gets to a certain stage, proposals solidify to an irreversible extent and we are caught in a process that seems unstoppable. People are undoubtedly frequently aggrieved because they feel that they were not consulted at the right time. I hope that, under the new regime, we will engender as part of the culture change much closer involvement between elected representatives and those whom they represent, as advised by proactive, not defensive, planning departments. We all hope ardently that such a culture change will happen.

The Convener: We need to cover several more issues, so I ask members to keep their questions short to allow maximum time to hear from our

witnesses. Richard Hartland has a final point on the present issue before we move on.

Richard Hartland: If we get the community involvement or inclusion process right, that will greatly speed up the rest of the plan adoption process. However, we will then generate a fresh set of public frustrations. If people have been through the process and have been told that because a development is of a certain size, it will generate community facilities or infrastructure, there will be an impatience for it to happen. Brownfield, derelict or contaminated land is being dealt with but, as the system is laborious, public confidence is lost because projects cannot be delivered quickly enough. That needs to be taken into account.

Ms Sandra White (Glasgow) (SNP): I thank Graham U'ren for clarifying the suggested independent scrutiny of the national planning framework by commissioners, as I had a question about that.

I have several questions but, as the convener says, we are tight for time, so I may skip over some of them and write personally to the witnesses on the issues.

Under the new hierarchy of developments, there will be national, major and local developments. The variety of action plans throughout the regions has been mentioned. I seek the witnesses' views on the move to a three-tier system. Would you prefer a one-stop-shop approach to development management throughout the country or a variety of approaches, perhaps based on geography?

Steve Rodgers: That question gets to the nub of whether the proposed new system will be fit for purpose. One of the white paper's objectives was to ensure that the system is fit for purpose by ensuring that decisions are taken at the appropriate level in the new framework. From that point of view, the proposed hierarchy makes some sense. For example, it makes sense that national-level applications will be determined nationally and in the national interest, because national issues will come to the fore in that determination. The remainder of applications, whether they are for major or local developments, will stay at the local level, although some major ones may go to the Scottish ministers.

I have no difficulty with the concept of a hierarchy. However, an issue that must be considered is the extent to which decisions will be centralised in the Executive and removed from those who are locally accountable. We may have to return to that issue.

11:00

Graham U'ren: The member's question raises many issues. I commented that the variety of approaches to policy making in development plans is regrettable to an extent, but that comment does not apply to development management. In development management, planning authorities, as local authorities, work in the community and deal with what is actually going on.

There will be huge variety at the development management end of things both in how other services are delivered and in how authorities wish to deal with their customers anyway. I do not mean a variety in statutory procedure, statutory rights and all the rest of it, but a variety in the way in which individual authorities want to deliver development management. I think that there is a case for variety in development management, which is unlike the impression that I gave about how policy should be set out. Policy needs to be clearly understood and to adopt a consistent approach.

I am not sure what you meant by having a one-door approach, as I think you put it.

Ms White: You have answered the point already. It was not so much about having a one-door approach as it was about having one approach to development management across the country or having variation. You have said that you would prefer for there to be a variety.

Graham U'ren: Yes. I think it is for local authorities to decide exactly how they wish to deliver the development management service within the scope of their powers.

Ms White: I suppose that the word that I was looking for was "flexibility".

I was going to ask about the possible impact of the proposals on objectors. From our discussions on development plans, it seems that, if people are brought into the planning process at an early stage, we hope that we will be able to iron out the issues before getting to the stage of actually managing the plans. I do not know whether you agree with that, or whether you think that having a three-tier system would have an effect on people's objections.

Richard Hartland: A time lapse is involved in all this. We are not going to wake up tomorrow with the perfect development plan situation, involving full public engagement and full satisfaction with what we have. We will have a number of years of development plans still being implemented—outdated development plans that are being replaced. We need to cater for that engagement until we achieve the better product.

What I am suggesting—and what it is incumbent on us all to do—is that we should try to achieve what I would call early wins. In other words, if, under the bill, we can change the system for the better now, recognising that it is possible to

change it, let us do so early, and let us develop public confidence early, so that the bill starts producing the goods even before it is enacted and before the relevant secondary legislation comes in.

Some mechanisms can be introduced at an early stage, and participation in committees can be included in that. The need for committees to realign themselves for the purposes of more public involvement and contribution can be addressed now. There are some good examples around Scotland of where that could be done. We need to be wary about not waiting for things to be improved by an end date. Rather, we should improve them now, as we go along. There are many lessons to be learned, and there are many instances of good practice that could be implemented elsewhere.

Steve Rodgers: I have an additional point in relation to the notion that earlier engagement might lead to fewer objections, or even no objections. From my experience, I doubt that that will be the case. I think it more likely that, the more we engage people with the system, the more they will be likely to participate actively. We might well get more objections as a consequence of wider engagement, rather than fewer. I do not think that we should be frightened of that. There is a difference between consultation and engagement.

As for the eventual outcome of the process, there will always be individuals, organisations or companies that do not agree with it. However, if they feel that they have had their opportunity to get involved in it and if they have had their concerns listened to and addressed, we might like to think that there could be some acceptance of the outcome. My practical experience suggests that that is not always the case, and that people are not always quite as straightforward in their approach as that. I do not think that that should be a reason, however, for drawing back from wider engagement. The statutory requirement to hold hearings is a case in point. Inevitably, that will draw more people into the system, and it may well generate more conflict and objection.

The system must be able to deal with conflict. We will never make conflict go away; it is in the nature of planning. Very often, planning is about trying to reconcile and balance competing interests. For example, a large number of objections to development plans are based on landowner and developer interests. Those objections will not go away just because of engagement; landowners and developers have a commercial agenda and they will pursue it through to its conclusion.

Those are the additional comments that I wanted to make on the notion of public engagement and objections.

Ms White: I take on board exactly what you say. We will see how the discussion pans out in the rest of the stage 1 debate.

I would like to raise the issue of the change in responsibility for neighbour notification. As everyone knows, the developer is responsible for neighbour notification at the moment. Under the bill, responsibility will pass to local authorities. Are there resource implications for the local authorities? How do they feel about the change?

Steve Rodgers: We cautiously welcome the transfer of responsibility for neighbour notification to local authorities, particularly those that are associated with planning applications. There is substantial evidence that significant problems were caused in the past as a result of the failure to notify or the submission of misleading certificates. The bill gives local authorities the opportunity to take control of the process and, in so doing, remove the doubts in the minds of the public on the veracity of the process.

However, the change raises the issue of resources. The problem is that, although the process of notification should be relatively straightforward, the correct details on neighbouring properties are required. The way in which the bill sets out the process at the moment means that the entire risk passes from the developer to the local authority. The SSDP suggests that a developer or applicant should continue to play a role in providing the local authority with a list of the neighbouring owners and occupiers who are to be notified. The authority would then, quite happily, carry out the neighbour notification process.

Some groups have been looking into the impact of the changes to neighbour notification—in fact, they have run pilot exercises. They have found that the cost depends on the nature of the area. For example, the issues in remote rural areas are quite different from those in inner-city locations. The cost has been quantified at anything between—

Ms White: I am sorry; I do not mean to interrupt, but you mentioned pilot projects. Can you give the committee any information on them?

Steve Rodgers: Yes, I am sure that we could provide the committee with that information. For some time, a local authority benchmarking group has been meeting to look specifically at the issue. The group has also been liaising with Executive officials.

An attempt has been made to quantify costs: the group has come up with a figure of anything between £50 and £90 per application, which takes into account staff time, additional postage costs and the difficulties that are associated with tracking and tracing owners and occupiers. The

debate on resources has raised the issue of the new burdens for which local authorities will inevitably find themselves responsible. The question is: will authorities be adequately resourced so that we can properly meet everybody's expectations of the new system, or will the whole thing grind to a halt because of inadequate resources in the system?

Ms White: Will planning officers handle the neighbour notification process, or can it be done by other officers?

Steve Rodgers: Certainly, it could be done by other officers. However, it would still come within the planning function.

Ms White: So there would still be a cost implication.

Steve Rodgers: Yes.

Ms White: And there would also be a time implication for your officers.

Steve Rodgers: That is correct.

The other aspect of neighbour notification relates to development plans. We welcome the move to introduce a requirement for neighbour notification, again with the caveat that it should be sufficiently resourced. Neighbour notification of development plans will have the purpose of getting people engaged in the development planning process. The key is to get people engaged in the process at a much earlier stage. Neighbour notification will do that. In many instances, it is too late to become involved once a planning application has been made. There needs to be an emphasis on earlier engagement. Neighbour notification of development plans will help to achieve that.

The Convener: Rather than our giving the SSDP the responsibility for providing the information, it might be best for us to pursue the issue with the Executive, because the Executive is working with it on the benchmarking exercise.

Andrew Robinson: I want to comment briefly on the issue that has just been raised. In private practice, we are constantly asked to advise affected neighbours very shortly after they have received neighbour notification. I reinforce the point that that is a very late stage in the process. Often the recipient of a neighbour notification does not know what the local plan says. There should be prior warning. That links back to what I said to John Home Robertson earlier. The level of interaction between elected representatives, planning departments and affected communities is extremely important for raising the level of alertness about and awareness of what is happening, what is in the pipeline and what needs to be acted on now, rather than at the point when neighbour notification takes place.

The Convener: The academics who appeared before the committee last week gave us evidence on the issue. They said that in other countries there is a different culture of public engagement with the discussion about planning. They even suggested that in the United States newspapers are given awards for positively allowing communities to engage in the planning debate. Whether we can do that in Scotland is another matter, but it is worth considering.

Cathie Craigie: I want to continue on the theme of neighbour notification. Certain classes of development will require to be dealt with by pre-application consultation. A 12-week period of notice will be given before the application is determined. During that period, the applicant will be expected to engage with members of the public. What are your views on that method of dealing with an application? Will it help to alleviate fears that people have? Will it allow people the opportunity to discuss their concerns? How does it compare with the pre-application consultation that we have at the moment for telecommunications apparatus?

Richard Hartland: The concept of pre-application discussions is interesting and, probably, essential, but such discussions must be pitched at the right level. Pre-application discussion with communities is to be welcomed for larger-scale planning applications. However, I suggest that it should not be the responsibility of the applicant to engage in such discussion—it should be the responsibility of the local authority to manage that engagement. Too often in the past planning applications have arrived on my desk with community support, only for it to become clear that the community has been sold a package by a very competent salesman, but has not been informed of all the circumstances behind or implications of the package. Consequently, what it has supported has ended up being refused planning permission. It is better for the local authority to manage and to take responsibility for the process.

11:15

Cathie Craigie: If the local authority were to manage the process, might the members of the public who become involved see the local authority as an agent of the applicant? Might that be seen as too close an alliance? Should the process be managed by a planning officer, or could it be an officer of the council who is experienced in dealing with public involvement in consultation?

Richard Hartland: That happens at the moment, but it tends to be for post-application rather than pre-application discussion. The secret is in getting the balance right, and we have to ask

ourselves what the community is and who the people are whom we should be engaging with. Can they be individuals? We normally conclude that it should be a community council, a residents association or whatever body might be the direct conduit for the people living in the locality.

We have tried not to hold public meetings, as they tend to end up being coconut shies and I do not like sitting at top tables with coconuts. We need to put the message across that the proposals are the developer's and that our job as local authority planners is to balance all the factors in coming to a decision. We sit very firmly in the middle ground until the application is progressed and processed and the relevant factors come out. We are the managers of that process, but the message has to be that it is the developer's application.

Graham U'ren: There are some very important points here, and we should be encouraged by current experience. There have been some relatively successful cases in which developers have willingly gone into public consultation in harness with a local authority and have managed the concerns that have been talked about. Whether we have it in regulations that will implement the precise arrangements or just in good practice notes, it is important that we have clear guidance to all the parties involved on the position of each of the interests in the process. It is important that the developer goes through that process. It has, in some cases, proved beneficial, although it is still far from general practice at the moment.

We cannot get away from the fact that it is the planners of the planning authority who are associated with the process. I have some fairly bitter experience of other facilitators trying to conduct the process but, although they had the best will in the world, not understanding the planning issues and the planning process. As a member of the planning profession, I am bound to say that. However, we are prepared to learn how to do this sort of thing better because, ultimately, planners are there to do this kind of job. Facilitating the process is something that the planning authority and its planners should be at the heart of, and everybody should be clear about the roles that are being played.

Cathie Craigie: Let us move on to the important issue of hearings. You will be aware that some local authorities already hold hearings on applications. Is that a way forward?

Richard Hartland: I work for a local authority that holds hearings on major planning applications. Generally speaking, it has been beneficial for people to represent their views and have some influence—and there has been influence in many instances. The secret is for local authorities to convince people that they have had an opportunity to have their say in a way that avoids people confusing having their say with getting their way. Often, people think that they have not been listened to because they have not won the argument. A big task for us is to get the message across that there is a genuine purpose to people having their say at hearings or at planning committees.

Cathie Craigie: Whose responsibility is it to get that message across? Is that something that local authorities should be taking on, or does the Executive have a job to do in making the public much more aware of the processes that they will be able to go through?

Richard Hartland: Ultimately, it is the local authority's job, and the emphasis is on the word "local". I hope that, through our elected members and our experience, we understand our communities, and we should engage on the basis of that understanding. There might be different ways of doing it with different communities. I have recently completed a protocol for the engagement of community councils in the planning application process, which was a difficult document to put together. It has now been rolled out to all the other community councils in West Lothian to invite their opinions, and we were given some wonderfully simple ideas from people who were looking at the issue with fresh eyes. I think that it will be a good document as a result, and I hope that it will be well implemented.

Cathie Craigie: That is something that you might want to share with the committee.

Richard Hartland: I am happy to do that.

Mary Scanlon: I would like to return to the pre-application consultation, but first I have a supplementary question about the points that Cathie Craigie raised.

Paragraphs 128 and 129 of the policy memorandum cover a crucial part of the public consultation, but I think that many members of the public would be quite surprised that one of the categories for a pre-determination hearing is:

"Applications for major and local developments which are significantly contrary to the development plan".

There is a general belief that the public are involved in the pre-application consultation and that, once the local plan is in place, it is in place for five years. However, what we see in paragraph 129 is almost a loophole. What do directors of planning think about that? The development plan is not as hard and fast as it seems to be, and measures could be considered contrary to the local plan or could be "significantly contrary" to the plan. Is not that opening up serious problems for holding those hearings?

Steve Rodgers: It is an attempt to get below the generalities that are in the bill and to get down to the level of detail required. Although everybody will welcome the introduction of mandatory pre-determination hearings, the real issues are around the detail of that process—the categories of application that it will apply to and the circumstances under which hearings will have to be held—and all of that is reserved for further orders and regulations. I take the point, however, and you are right to ask whether we should really be setting out at this stage to indicate that there are clear categories of application that would or would not require a hearing, in advance of the publication and development of the regulations.

Mary Scanlon: You mentioned detail, but it is not exactly detail that we are talking about. We are talking about

"Applications for major and local developments which are significantly contrary to the development plan",

which the public, community councils, neighbours, councillors and MSPs have all signed up to. Now, however, we see local authorities having to hold pre-determination hearings for applications that would make significant differences to the local plan. That must make your life impossible.

Steve Rodgers: The practice adopted by most of us who have operated hearings systems is that there would be a hearing in the case of a proposal that was a significant departure from the local plan and for which, for other material reasons, the recommendation was that the application should be approved. There is a requirement for that debate to be held in a public forum because, as you have said, the local plan may state that a site is for X, yet there may be a proposal for Y. There may be other material considerations, such as changes within the local community or changes in local economic circumstances, that would allow a justification to be made for departing from the plan, and the hearings process allows that decision to be debated and taken in public.

I do not think that it would be necessary to have such a debate in public when the recommendation was that the application should be refused, in line with what was in the local plan. Although the application might well be for a development that was significantly different from what was recommended in the local plan, if the authority had no intention of approving it, the case would not need to be considered in a hearing because the applicant would have the right to take matters further through the appeal process.

The Executive will make orders and regulations on the detail of the hearings process. We must encourage it to ensure that we have hearings when it would be appropriate to do so and when they would add value to the process; we should not have hearings just for the sake of it or in circumstances in which they would add nothing.

Another category of application to which the policy memorandum refers is applications that require the submission of a supporting environmental impact assessment. One must ask whether it should be necessary to hold a hearing for an application simply because it required the submission of an environmental statement. It may be the case that there are no objections to an application because it is in line with the development plan and that approval is being recommended. Why should we waste time and resources by holding an unnecessary hearing simply because the regulations require that? Such issues need to be thought through in some detail.

The SSDP has offered—and will continue to offer—to work closely with Executive staff on the drafting of the regulations. Our perspective is slightly different in that we take a practical approach because we will be the people on the ground who will have to implement the proposals.

Mary Scanlon: I appreciate that the proposals will afford enhanced scrutiny of particularly controversial applications, but members of the public believe that the development plan will be cast in stone. That is not exactly what the policy memorandum says; it will be possible to unravel the development plan. Perhaps we can come back to that issue, given that time is moving on.

I return to Cathie Craigie's question about the pre-application consultation. Are there any alternative measures that could give the public greater confidence in the system and in their ability to counter any perceived injustices? That question is for all the witnesses.

Andrew Robinson: At the moment, it is not always that straightforward to get a pre-application discussion. When we are acting on behalf of a client, it is not uncommon for a planning authority to say to us, "Put your application in and we will consider it." That is not helpful, given that existing Government advice states that there should be pre-application discussion. Holding such consultation is a good way to conduct business, but I am aware that many of the planning authorities with which we work are acutely overburdened with casework and that there comes a point at which certain aspects of an ideal service may have to be sacrificed in the interest of being able to shift the work in reasonably good order.

A related issue is discussions while an application is being considered. Only yesterday an architect called me about a planning application that he had made for listed building consent on a grade A listed building. He was indignant because his request for a meeting to consider his proposals had been declined. He had been told just to make

the suggested alterations and to resubmit his application but, as a qualified architect, he did not agree with the proposed changes. Specific cases do not necessarily prove a general rule, but such circumstances arise far too often for one to be relaxed about the situation.

The lack of a dialogue between the officer who is handling the consideration of a proposal and the applicant, who is often professionally represented, is sometimes a cause for concern. However, even if legislation is introduced to make that dialogue mandatory, there is still the resource question.

11:30

The Convener: I want to ask about building confidence, not just in the predetermination hearings, but in the planning system as a whole. At our planning event, it was suggested by some parts of civic Scotland—community councils in particular—that the thing that could balance access to justice would be the granting of a third-party right of appeal. Do you, as professional planners, agree with that suggestion? Do you have reservations, or do you think that a third-party right of appeal could go some way towards addressing issues of social justice?

Graham U'ren: It is important to realise that the expression "third-party right of appeal" raises some questions, the first of which is about the third party. Would such a provision offer a right to any individual to try to frustrate the process, or would it genuinely be about the wider public interest and how that is represented? The second question is about the appeal. An appeal is not necessarily another bite at the cherry; the issue for the wider public interest is how well the public are involved all the way through the system. Those two points are the essence of the social justice issues that have been raised.

We spent a long time debating the matter and concluded ultimately not only that a third-party right of appeal is something that we, as professional planners, do not want, but that it does not underpin notions of social justice. In that respect, early engagement in the making of development plans is far more important. We might go slightly further on that in the bill. The bill explains, among other things, that the main issues report should be an accessible document, but there is no reference to local authorities' having a duty to build capacity in the community so that the community can become engaged. That is something that we want to examine closely.

Planning Aid for Scotland is closely involved in that kind of work, the value of which is being recognised more and more. We support Planning Aid: we grant-aid it in Scotland and run it in England. We are concerned to ensure that Planning Aid is a success and that it goes from strength to strength—it is very much about building capacity so that communities are better able to engage. That is the real social justice issue, which is coupled with the principles of democratic decision making, which are not about being able to go over the heads of the decision makers but about calling the decision makers to account in the appropriate way through openness and transparency in the system and the provision of explanations.

For those reasons, we do not think that the third-party right of appeal is a social justice issue. There are many practical issues to do with the implications of a third-party right of appeal for the efficiency and effectiveness of the system. We do not consider that the level playing field issue applies, because the positions of applicants are always different. The applicant has an interest in the property and in the development opportunity for the purposes of their economic and domestic welfare. The effects of loss of that opportunity might in many cases be so serious as to outweigh the benefits to the community of the application's being turned down. There are many other ways of addressing a community's concerns than simply to stop one individual. There are also, in respect of many contractual situations, serious legal consequences—not only as a result of not delivering private development, but of not delivering public developments that would be of significant public benefit. Perhaps Ann Faulds can explain that better.

For those reasons, although we are wholly behind there being public interest in the system and we support the principles of social justice, we oppose a third-party right of appeal.

Richard Hartland: I agree fully with Graham U'ren. It is incumbent on us to have a system that is as open and transparent as possible, and which includes proper and full explanation of decisions. Sometimes, we fail by not giving adequate reasons for decisions.

My worry is linked to something that I said earlier. We would in many cases need to ask what would constitute a third-party right of appeal. I suspect that if an appeal was based on material planning considerations—which should in the first instance have been the determining factor in the application—the mechanism will become frustrated. The third-party right of appeal will become another hurdle that can be put in people's way. We must see the difference between people not getting fair, reasonable, democratic and well-intentioned decisions and people not getting their way.

Jackie Baillie (Dumbarton) (Lab): I had intended to sit quietly, but it is very difficult for a politician to do that, so I thank the committee for the time.

I want to pursue some particular points. I welcome much of what the Executive proposes—it is positive—but the witnesses have throughout the meeting talked about culture change. Culture change takes time and there are, as I am sure you will acknowledge, currently issues of trust and failings in the system. How do you respond to that?

I am pleased that the discussion about TPRA recognises that the term means many different things to different people. On the back of Steve Rodgers's interesting evidence, I wonder whether we would end up with more people objecting, and whether we would not cause frustration because there is not so much a right of appeal as a right of referral to ministers as a backstop position. After all, if developers have a set of rights, is not it appropriate to balance those? I pose the question: is there a third way?

Richard Hartland: There is at present a mechanism by which developments that would run contrary to a development plan, but in which planning authorities have a financial interest, can be referred to ministers, if the objectors are minded to do that. That mechanism is available to everyone now and we are obliged to follow it.

Patrick Harvie: I want to pursue the same issue. I sense that people feel that there is unfairness. I want to know whether planning professionals prefer a particular mechanism to get over that sense of unfairness. That is one of the things that put people in a combative, confrontational and adversarial mindset, which we all want to remove from the planning process. If a wider right of appeal is not the right way to overcome that sense of unfairness, what is? If we do not get that right, we will not get the upfront, active, honest and open-minded engagement that we all want.

Graham U'ren: We are in a bit of a chicken-and-egg situation in some respects. Our attempts to improve the system should not be jeopardised by our changing the fundamental principle that we should not simply bolt on extra points of redress just because we are not fixing what happens at the beginning of the process. We have to ensure that we address the issue of early engagement—it is fundamental.

Jackie Baillie asked about a third way. When the debate started, the Royal Town Planning Institute was very concerned that the debate was going to become like a pendulum swinging between two extremes. We were concerned about that because there was no looking for other ways out of the problem. If that pendulum continues to swing, we might end up with the wrong perspective on the exercise. As was discussed earlier, the planning system is about trying to reconcile many conflicting objectives in our communities and in policy aims.

Our real concern is that that should never at any stage lead to a conflict of ideologies. Whatever the outcome, we need a planning system that is robust enough to service the democratic British public and its political systems. We cannot have the planning system being used as a political football. The debate should never lead to that and it should not encourage people to take a rather liberal view of what is up for grabs in the planning system.

There must be a serious debate so that we have convergence towards a system that will work. That system will work only if, when problems arise, there is a decision-making process that people accept and have respect for. The question then is about what happens in between. Richard Hartland has already said that the potential of the call-in process, which avoids second bites at the cherry after the first decision maker has made the decision, must be examined. In our view, there is really no alternative to that. If you cannot accept one or the other, that is the only place to look. We cannot just have another go at the first decision maker's decision, which is entirely within their competence. The potential for ministers to intervene, having been notified of an intention to make the decision, is the key area to examine.

Andrew Robinson: I would answer by saying that there must be strong and well-grounded participative development plans. At the end of the day, an open process and strong environment-based local plans will provide confidence that decisions have been reached properly. The local plans that we have at the moment are not—for the reasons that we discussed earlier—good quality. That has, in my view, been caused by two-tier statutory planning. If in five years—certainly in 10 years, but I hope that it will happen in five—we do not have vastly better local plans than we have now, we will have failed the people to whom we have argued that the TPRA would be merely a bolt-on and an admission of failure on the part of our planning system.

The big hope that is being invested in the planning reform process is that we will get a planning system that is founded on strong development plans. Not everybody will be pleased about what comes out of that—there will always be winners and losers—but the big problem for our profession is increasingly to do with explaining decisions, whether they have come through the plan or as a consequence of the plan. I hope that you do not think that my answer is a cop-out, because I think that what I have said is fundamentally important. We have no difficulty at all in understanding why people want the TPRA, but we hope that there is another course that we can take in order to avoid it.

Richard Hartland: I agree with Andrew Robinson. I have heard it said that there being

inadequate resources to make a third-party right of appeal mechanism work is a reason for not having one. Lack of resources would be a fundamental flaw—if a measure is good, it should be resourced. I suggest that resources should be used to improve the planning system, as articulated in the bill. I agree that the system needs to be improved; we, as local authority planners, are the first—because we suffer the biggest headaches with an out-of-date system—to say that we need resources to improve the system.

Mary Scanlon referred to significant departures from the development plan; there is some historical baggage in that area. Many significant departures from the development plan come about because the development plan is out-of-date and life has moved on—the economy and dynamics of the country will have moved on significantly from a development plan that is 10 years out of date. However, to label a development as

"significantly contrary to the development plan"

immediately creates prejudice against it and builds up a problem of public confidence in the decision-making process. How can a decision be made on a development that is contrary to the development plan when life has changed since the plan was written? Resources should be allocated to improve the system, as has been discussed today and as is articulated in the bill.

Ann Faulds: As a lawyer, I stand to gain a lot if third-party rights of appeal are introduced, but I am fundamentally opposed to their introduction and I endorse all Graham U'ren's comments. One of my real concerns is that such a system could be open to abuse, which would delay important economic decisions. It could be abused by people who are commercially or politically motivated or who are ignorant of the planning system. It will be a very sad day for the planning system in Scotland if a third-party right of appeal is introduced.

11:45

The Convener: I call Patrick Harvie and ask him to be brief.

Patrick Harvie: Are not we trying to achieve a situation in which development plans are not allowed to go out of date? Surely plans will be relevant if they are kept up to date.

Let us say that approval has been given to a development that is contrary to the plan that everyone has participated in and signed up to. I suggest that, only when people feel that a decision has been made wrongly should they be given recourse other than going to court. Given that such situations will arise rarely, that suggestion would not give a field day to lawyers. Is not it possible to send out the message that the system has to treat people fairly right through the process, and to say that it should do so in a way that does not lead to lots of appeals? I do not want people to have to go through lots of appeals only to feel frustrated at the end of the process.

Richard Hartland: As I said, such a mechanism exists to a certain extent. If an authority is minded to grant an application that is significantly contrary to the development plan and which has a body of objection against it, the application can be referred to Scottish ministers. A degree of independent scrutiny exists and has been used on a number of occasions.

Who—when looking at the development plan for the Calders area of West Lothian—would have envisaged that there would be a prison on our radar? It was not there when the plan was agreed, but changes in Scottish society meant that an additional prison was required. In terms of material planning considerations, the site was appropriate in respect of the vast majority of factors—in fact, the development regraded contaminated land and brought jobs into the area. Of course, it was contrary to the development plan; it had to be and there was a body of objection to it. The application was referred to Scottish ministers who assessed it independently and decided to allow the authority to issue the decision. Independent scrutiny was involved.

Ms White: I will try to be brief, convener. There seems to be a misconception, particularly among developers, that if a third-party right of appeal—or community appeal, whatever we want to call it—were to be introduced, people would appeal against anything. However, strict criteria would be set for the granting third-party right of appeal—an application would have to be accompanied by an environmental impact assessment and the development would have to be contrary to the local plan. Patrick Harvie and Andrew Robinson rightly said that people will be involved at the beginning of the local plan process and so can participate in drawing up the plan. People would have a third-party right of appeal only if the authority were to deviate from the plan.

I turn to the fundamental democratics of the issue, which Graham U'ren raised. We are talking about involving the public and getting their confidence. Given that 86 per cent of the Scottish public who responded to the consultation on the bill said that they were in favour of third-party right of appeal, surely it is incumbent on the committee and Parliament to do something about that? In a nutshell, people do not like the lack of transparency and unfairness in the system—they feel that developers have it all and that communities and people have nothing.

I would like to see some form of third-party right of appeal that would be granted according to the

strict criteria that have been set. If the development plan is discussed earlier in the process, people will be more focused and involved in the process. However, where an authority deviates from its plan, is it too much to ask for communities and people to have a third-party right of appeal? After all, we live in a democratic country.

Ann Faulds: Such a right would have to attach to a person and not to a type of development. We would then have to start to divide up society into those who had the right of appeal and those who did not. That would be a difficult call to make.

Ms White: We would have to look at the issues. It is very easy to talk about putting things into boxes. I am sure that there are ways of dealing with the problem; other legislation could be used, for example.

Steve Rodgers: The bill reflects some of the concerns that Sandra White expresses, but it does so slightly differently by putting more emphasis on the early engagement of people and communities in the process. It will also introduce a statutory requirement for third parties to have a right to be heard before planning applications are determined. That reflects a desire to get more people involved in the decision-making processes.

Amendments to the bill have been suggested, and there are some indications in the supporting documentation that will ensure that rights of appeal will be prescribed in certain ways. The right of appeal would, in many instances, not be exercisable. Somebody referred to it as a lowering rather than a raising of an end of the playing field.

The fundamental issue is that such a third-party appeal process would come at the wrong end of the decision-making cycle. The emphasis should be on effective early engagement. There should be clear and transparent decision making during the process and there should be clear and open communication after it, so that people understand the basis on which decisions are made.

The Convener: Jackie Baillie will ask a specific final question on that before we take a short break.

Jackie Baillie: You referred to the right of referral or call-in by Scottish ministers. Is not that right exercised by local authorities rather than by communities?

Richard Hartland: That right is exercised by the community because it will come from a direction by the Scottish Parliament—or it will be when it is enshrined in the legislation. There has been a democratic decision to put that right in place in the first place.

I would like to reflect on the concept of rights of appeal. There might be seen to be an imbalance in rights of appeal in that the rights of appeal for the applicant might be too broad. People might see that and be rather tense about it. If a local plan is up to date and contains sound policies that have been democratically processed in full consultation with the communities, and an application comes in that is significantly contrary to the development plan, what is the value of having a right of appeal? All the arguments would be trailed out again. That would not only cause great public expense, but would cause great community anxiety and uncertainty. That factor needs to be considered. I am sorry. I am not parrying the question with another point, but as a planner who works with communities I would like to see more examination of that.

Ann Faulds: Jackie Baillie is absolutely right that community groups cannot independently trigger a referral or a notification of an application. Applications are referred under the regulations that are set down. What such groups can do—I have done this for clients—is write directly to the Scottish ministers, asking them to call an application in. The power of call-in hangs over every application, whether or not it is caught by notification.

The Convener: Thank you. We will take a five-minute comfort break.

11:53

Meeting suspended.

11:59

On resuming—

Mary Scanlon: Let us move on to schemes of delegation. In our pre-legislative consultation with planning officers and others, it was suggested that the proposed system for such schemes had the potential to drive a wedge between planning officers and elected members. Do you agree? Graham U'ren mentioned consistency but, according to paragraph 147 of the policy memorandum, each planning authority will have to submit its proposed scheme of delegation to ministers. That will hardly lead to consistency because there could be different levels of appeal in every authority. Let us start with those two questions. Will the system for schemes of delegation lead to conflict between planning officers and elected members? Are we recommending an inconsistent system that could lead to problems?

12:00

Steve Rodgers: When you spoke about the possibility of a wedge being driven between planning officers and elected members, you were referring to the local review provisions, whereby a

decision that had been taken by a planning officer under delegated powers could be called in for review by a local body comprised of elected councillors. That is one element of the bill that gives us cause for concern, in that it could undermine the positive relationships that exist in many areas between planning officials and elected representatives.

In addition, we have reservations about the way in which that process will be perceived by members of the public. In effect, decisions that are taken under delegated powers are still decisions of the council, both formally and legally. The review process will be conducted by the same body that took the decision in the first place—in other words, the council. That raises some issues.

In case there are any misconceptions about delegation generally, it might be worth pointing out that just under 80 per cent of all planning applications in Scotland are already determined under various schemes of delegation. The fact that the extent to which delegation is used varies quite widely is probably the issue that the bill is getting at. There is a desire to bring schemes of delegation up to a certain standard, to make decision-making processes at local level more efficient.

We have no difficulty with the desire to achieve consistency, as long as it does not hinder some of the better performing authorities that already successfully operate well-established schemes of delegation. If everyone had to adopt a standard approach, such an authority might find itself having to adopt a scheme that was not as good as the one that it has at present. The provision of guidelines or even a model approach by the Executive would be welcome, provided that that was regarded as a minimum or a target and there was nothing to stop authorities going beyond that if they wished to.

Mary Scanlon: At our meeting on Friday, you mentioned that 90 per cent of applications to your authority, which is East Renfrewshire Council, were processed under delegated powers. Perhaps that authority would be one of those that would lose out if the system were standardised. As things stand, your authority benefits from the increased use of delegated powers, but do you accept that the proposal on schemes of delegation could lead to a great deal of confusion because there could be different systems throughout Scotland?

Steve Rodgers: I am not convinced that it would lead to confusion. The objective behind reviewing the application of delegated powers is to ensure that we take decisions as efficiently and effectively as possible. The use of delegated powers is a way in which authorities can cope with ever-increasing numbers of planning applications. The context for the proposal is that the number of planning applications that authorities have to deal with has grown enormously in recent years. Nationally, the volume of decisions that have been made has grown by more than 30 per cent in the past four years. In my authority, it has grown more significantly than that and we are now dealing with 50 per cent more planning applications than we were five years ago. However, we are managing to deal with 10 per cent more applications within the two-month timescale, which is simply the result of a review of the management and decision-making processes. That is what drives the need to have schemes of delegation in place and to ensure that a minimum standard is being attained.

Richard Hartland: I operate in West Lothian, which has a fairly wide system of delegated powers. Critical to that is what I have called the democratic safety net, which seeks to give members of the council the best opportunity to refer items to the committee. That is the bottom line. If a member wants an application to be referred to the committee, I have no jurisdiction in that. The application is called, it goes to the committee and a report is prepared.

The council feels the various benefits of the delegated powers scheme. I know that I am speaking on behalf of the council on this because when I reported on a year and a half of operation of the scheme, members approved of and were happy and confident with it. It has made a 10 per cent saving in resources through staff time. There was also a 4 per cent improvement in performance, which was greatly welcomed. The members felt that the decisions had been made competently, efficiently and in accordance with the development plan. If there was any dubiety about the development plan, it was referred to the committee. A lot of that is dependent on experience and knowledge of the way in which the council operates. The scheme of delegated powers has been a great boon and I have had only two complaints from members of the public about how it operates. To me, that shows that is sound.

Your other question was about the appeal mechanism driving a wedge between planning officials and members. I suggest that there is always the potential for that to happen, even under the existing system. It is up to us as experienced and, I hope, knowledgeable planners to develop our relationship with committee conveners and members so that they can allow the scheme of delegation to operate with confidence. West Lothian Council has a system of hearings in which applicants and objectors have a period of time in which to make their submission to the committee. I give the advice and there is cross-examination. That is not terribly different from a hearing on appeal. I suspect that a hearing on appeal is very

nearly the same mechanism and that it will operate in much the same way.

I admit that I can come away from the committee feeling that a decision was wrong. That is not just because my recommendation was overturned and I am in the huff. I might feel that a decision was unjust, but I know that it was made using the democratic process and I accept and live with that. There are instances where the issues are not clear cut and I might feel that the members made a good decision under the democratic process—even if it was contrary to my recommendation—because they took on board factors that were not material planning considerations. A wedge could be driven between members and officials, but it is up to us to develop well beyond that. Most of my contemporaries and peers will have a relationship with members that is sound enough to allow them to do that.

The Convener: Are there any final additional points?

Graham U'ren: I have one point to make that has not been mentioned. The delegation scheme provisions are linked to the local review provision. However, the review arrangements will not apply if refusals are not delegated—and a number of authorities do not delegate refusals. Instead, appeals will go to ministers in the normal way. As well as the issue of the extensive numbers of applications dealt with by delegated powers, there is the issue of whether they include refusals.

I was going to make a follow-up point, but I will leave it at that.

Mary Scanlon: That is a crucial point. Last week, my colleague Christine Grahame pursued the question of what happens when there is a refusal.

Some of your colleagues said that if every local authority had a different scheme of delegation, there could be different appeals in different areas throughout Scotland. They thought that that would be a problem. How do you feel that developers and communities will benefit from the introduction of this system? You said that it will be quicker and will save money. What benefits will the right-to-review system have over the current right of appeal to Scottish ministers?

Richard Hartland: Again, it must be part of the package of having better inclusion and more up-to-date development plans and working on a level playing field, as opposed to the inconsistencies that are built into the system at the moment. I take your point that we should be aiming for consistency throughout Scotland where we can achieve it. However, some local authorities will manage their affairs in a different way from other local authorities. That is only right and proper, as they know their communities and the geographical distribution of their populations. We do not want to impose something cumbersome on local authorities.

I have lost the drift of your second question. I beg your pardon.

Mary Scanlon: It was about the benefits of the proposed right-to-review system over the current right of appeal to Scottish ministers.

Richard Hartland: I have delegated powers to refuse if that refusal is in accordance with council policy. The council sets the policy and I implement it. I deal with many applications that are supposedly controversial but, if an application is significantly contrary to the development plan and there are many objections to it, it is not a controversial application as far as I am concerned: it is a very simple application and it is refused in accordance with the development plan.

There is greater democratic accountability if decisions are made at the local level by the local councillors—the local members and the planning committees—rather than by the men in grey suits from Falkirk. From time to time, the committees resent the decision-making power being taken away from them when they have reached a decision on what they think are fair, democratic and local grounds. That must be taken into consideration as well.

Ann Faulds: This may be an important issue for applicants for local developments. Those might be the householder applicants who are complaining about the unfairness of the system, rather than the applicants for major commercial developments that will be up at the national level of development. A decision that is made under delegated powers is, to all intents and purposes, the same as a decision that is made by the reviewing body. In one legalistic view, you are removing the right of appeal for people making applications for local developments but maintaining it for major developments. A review by the body that delegated the power would produce just the same result, so there is really no right of appeal from the applicant's perspective. The council makes a decision and the right of appeal is to the same body that made the decision. That has to be thought about carefully to protect the rights of applicants for local developments. We do not know how "local development" will be defined, but an application for such a development might well be made by the man or woman who goes along to their local member's constituency surgery of an evening rather than a major retailer or housebuilder.

Another important point is the professionalism of the planning officer. It is as if the clerk to this committee was advising it for four days a week but, on the fifth day, was appearing before it in a

contentious case against a member of the public. How would the committee feel about that? How would the clerk feel about that? How would the member of the public feel about that? Those things have to be sorted out in the detail.

12:15

Patrick Harvie: Some changes are proposed for applications where the right of appeal is retained. What is the likely impact of the changes? I am thinking in particular of the general restriction that new information cannot be introduced at appeal and of the shortened timescale in which an appeal can be raised. Will that lead to fewer appeals or will applicants simply whack in their appeal as quickly as possible in order to avoid the early cut-off date?

Richard Hartland: I am very wary of developers and others being allowed to produce new information during the appeal process. The information may not have been put before the body that determined the application and it certainly may not have been subject to public consultation and input. The information may be factual in nature, but careful thought needs to be given to allowing the introduction of new material that argues either in support of or against a case. The experience in England and Wales is that there was a significant increase in the number of appeals. Lessons need to be learned from that and scrutiny applied to find the exact reasons for the increase.

One of the reasons for finding in favour of a reduction in the timescale for appeal is that, the longer the timescale, the greater the frustration and anxiety about the impact of the development and the lower the confidence in the process. That is the case whether the development is a local one to which two or three householders object or a more significant development to which a whole community objects. The sooner the appeal process can be wrapped up, the better. The sooner it happens, the sooner people feel confident about selling their house or about the future of their community—they can return to their previous settled lifestyle. The uncertainty that the appeal process causes is an imposition on that lifestyle.

Ann Faulds: I agree with what has been said on the timescale. Major developers will organise themselves so that they are prepared to exercise their right of appeal. A good balance has been struck in the bill. The fact that people know what is happening ensures certainty for the wider community.

When I first heard about the constraint on introducing new information, I thought that it was a bit artificial. The inherent flexibility of the planning system means that if a decision goes to appeal, it is looked at afresh by the supreme planning authority, which takes the case at first instance. My original view was that if things have moved on in the interim, there is no point in going through some sort of fictitious assessment of the case and not considering what is important on the ground at the moment that the appeal is being heard. Having read the bill, I now see that it includes a provision under which new information that comes to light in the intervening period between the decision and the appeal can be introduced. I think that the intention is to stop developers from saying, "That case did not work. Can we make up another one?"

Graham U'ren: I have a point on section 18, although I am not entirely sure of my ground in making it. Although section 18(2), which introduces new section 47A into the Town and Country Planning (Scotland) Act 1997, seems to make it clear that no further information can be introduced, section 18(5)(b) talks about regulations that might qualify the situation in that regard. I am not sure what the Executive has in mind.

Patrick Harvie: Perhaps we can take that point up with the minister.

What are your views on the replacement of the current system of outline planning permission with a system of planning permission in principle? I also want to raise the issue of planning obligations. I am particularly interested in your views on the unilateral obligation, as I am a bit unclear about how it will work, what value the local authorities will attach to it and how it will be determined. I hope that the panel will respond to both questions.

Richard Hartland: I will respond to the first question and hand over to Steve Rodgers for a response on the second point. The clarification of the outline planning permission application mechanism is to be greatly welcomed. If I am being honest about it, the current act is difficult to understand at times. It is hard to persuade a community or individuals that, after outline planning permission has been granted, an application can be made for reserved matters—but only certain issues or matters—and that further applications may be made for different matters at a later date. That causes confusion and uncertainty.

If outline planning permission is to be granted, people would prefer it to be granted and then one application to be submitted as a package so that they can understand the whole development concept. They would prefer not to hear things such as, "The landscaping plans will be submitted later, but don't worry—we'll make sure they're okay," which they might consider to be platitudes. Such an approach is not good enough. People must be convinced at the outset that the design of the

access or the landscaping is in place and is good enough. The process is to be sharpened up, but it can be sharpened up even more.

Steve Rodgers: I want to move on and deal with the second part of the question, on planning obligations. The bill proposes fairly substantial changes to how the system of negotiation and agreement with developers operates, and we have concerns about certain aspects of those proposals. A very complex process of negotiating with developers is gone through to ensure that essential pieces of infrastructure and essential contributions towards meeting affordable housing and education facility shortfalls can be met. The idea of developers being able to submit agreements unilaterally was raised. Such an approach puts the onus back on to developers to anticipate our requirements and rather undermines the negotiation aspect of the process. There would be a mechanism for a developer to reach its own view about what is required, regardless of what the planning authority might request, and to force the issue by attaching that view to the planning application and insisting that that is determined.

The introduction of a right of appeal into the process, which was not mentioned, is a further issue. From a practical point of view, that right will undermine our ability to conduct negotiations with developers in the first place because they will realise that it does not matter if they cannot reach an agreement with us, as they will have a right of appeal later in the process.

The introduction of a power for developers to apply for a section 75 agreement to be modified or discharged raises the same sorts of issues. There may well be situations in which a section 75 provision is negotiated and agreed and then an application for it to be modified or, indeed, discharged quickly follows. We have concerns that the ability of authorities to secure the necessary infrastructure and other improvements that are required on the back of development proposals will be undermined.

Mr Home Robertson: Steve Rodgers touched on the point that I made about affordable rented housing. Does he acknowledge that there can be difficulties not only in earmarking land for affordable rented housing, but in retaining it for that purpose? I wonder whether a distinct land use classification for such an essential social purpose would be helpful.

Steve Rodgers: That issue certainly needs to be addressed. I think that you said previously that securing affordable housing on the back of private developer investment is only one mechanism for providing affordable housing. We must also ensure that housing associations can satisfy local housing strategy requirements.

The current system can make it difficult to safeguard sites, although we have specifically safeguarded sites for affordable housing in our planning in the past. The term “affordable housing” was not used then—it was called something else—but whatever the jargon was, we safeguarded sites for that purpose. However, there is an issue. Once a site has been identified in planning terms as suitable in principle for housing development, things are open to interpretation by developers who simply want to build mainstream housing on that site. They might argue that, if it is okay to build housing on that site, the principle of having housing there is being accepted, and that, in land use planning terms, no distinction should be made about the type of tenure. I think that provisions need to be built into the development plan to safeguard sites for affordable housing.

Mr Home Robertson: Thank you.

Graham U’ren: I agree about the practical problems of identifying specific sites. We have been here before with the whole business of affordable housing. It is important to recognise the issues. The Planning etc (Scotland) Bill gives us a process for delivering all sorts of outcomes. We have to demonstrate that the new system will be able to deliver those outcomes, and we must consider affordable housing as one of them.

I am inclined to be cautious. As we know, there is no one, simple way of achieving this. An effective approach to affordable housing will depend not so much on site-specific proposals as on the way in which the policies are written and the way in which the local plan is integrated with the local housing strategy. Needs assessment is absolutely vital, and we have to keep everything up to date. Effective use of planning agreements is a further theme.

The planning gain supplement is also coming up. It will relate more to infrastructure issues than to affordable housing. Nevertheless, it is an amalgam of all the other things. We must manage things much more successfully in an integrated way that includes all the people responsible. That will help deliver many things, of which affordable housing is one.

I will add a rider to that, taking the example of a planning agreement that is designed to help deliver affordable housing. To go back to a previous answer to Patrick Harvie, our view is that the facility for appeal is available only when a request for modification to an existing agreement is refused. If both parties sign up to the agreement in the first place, it will be very hard for either party to back out of it in court if nothing has changed in the meantime. We are rather more confident that the appeal provision does not represent a fundamental problem, and that we can continue to

use section 75 of the Town and Country Planning (Scotland) Act 1997 quite positively to achieve planning gains.

The Convener: Let us move on to good neighbour agreements, which the bill will introduce. Do you think that their introduction will make a positive contribution? Will they offer security and help safeguard community interests?

Steve Rodgers: It comes down to establishing their purpose and developing a clearer understanding of that compared with what is presented in the bill and its supporting documents. What can good neighbour agreements actually achieve? Are they enforceable?

We should be encouraging and promoting good relationships between developers and communities. It is open to question, however, whether the formalisation of that into good neighbour agreements will take off. The agreements would provide another mechanism—when they are viewed alongside the pre-application consultation requirements—for developers to be persuaded to engage with communities at an early stage. In our experience, the last thing communities want is to find out about a major new development proposal only once a planning application has been registered in their local planning office. The good neighbour agreement would provide another mechanism by which earlier engagement with communities could be encouraged.

The Convener: Would you be concerned about who would enforce good neighbour agreements? Do you have a concern that the obligation to enforce them will rest with local authorities? Is that necessarily an appropriate role for you, or are you already holding the jackets in such cases?

Steve Rodgers: We are, in many cases. Given the bill's introduction of provisions for appeal mechanisms, the local authority will inevitably become engaged in the process. That is unavoidable. Whether that is a good thing is open to question.

12:30

Richard Hartland: We have to be careful about what good neighbour agreements will do. The bottom line is that local authorities should have better powers of enforcement. In effect, we try to have good neighbour agreements by another mechanism when we are dealing with development and I would like to be able to develop that. For example, we agree on the activity on the site, the hours of working, the suppression of dust and noise and so on. We currently use conditions and planning permission to do that. Developers usually have to submit to us their modus operandi.

I would like to take what is already done further, by engaging communities to help us monitor developments. They have been very reluctant to do so and I have never quite worked out why. We do not have the resources to monitor developments, but our communities are made up of people who live on the doorstep of and adjacent to developments, so why can they not help us? There could be difficulties with vigilantism, but we should be able to overcome that.

The Convener: Do you think that vigilantism occurs because, for whatever reason, the local authority does not respond when communities such as those in my area have reported to the Scottish Environment Protection Agency and to the local authority a blatant abuse of the terms of the planning conditions attached to a landfill, for example, or an opencast mine? If that happens regularly, the community loses confidence in the system and people in the community are no longer willing to police the situation because no one in authority pays any attention.

Richard Hartland: That is the crux of the matter: hence our plea for better enforcement powers. There are other ways around it. For developments of that nature and size, with that economic and commercial value behind them, there is a mechanism enshrined in some mineral legislation, but it should be enshrined in planning legislation for all types of development. It should demand that all developers, extractors or whatever fund a compliance officer who reports to the local authority.

In those circumstances, there would be an up-to-date report every two weeks or every month—whatever period we specify—on how the operation is taking place. In areas of substantial development of any type—I refer particularly to core developments of 2,000 to 3,000 houses—we need to be able to implement a mechanism that means that there is a responsibility to report back to the local authority and the community.

There is another mechanism that is used in other countries. We demand it by condition. It has never been challenged and I am not sure about the legal certainty of it. We require the conditions of the planning permission to be posted on the site so that people are aware of the rules when the site is being developed. People who pass the site or who are affected by it can see what is going on and come back to us if there is a transgression. That is all tied up with more immediate and more efficient enforcement powers.

The Convener: I have some questions about enforcement powers, but first I have one on good neighbour agreements. You mentioned appeals. If a developer who is party to a good neighbour agreement has the right of appeal and is able to renegotiate the terms of the good neighbour

agreement, should the community also have the right to appeal? The Executive accepted that it had not considered that. Do you have a view?

Richard Hartland: I certainly think that the community has to be a participant in any appeal. Whether it should have the right to appeal itself is an interesting question, but if the good neighbour agreement is between various parties, all the parties should have the right to participate in any appeal mechanism.

Ann Faulds: I agree with that, but it is different in the case of a good neighbour agreement because they would both be parties to a contract and it would not be fair to allow only one party to have a remedy.

The Convener: That is my view, although I was interested to get your view.

Cathie Craigie, is your question on this point specifically?

Cathie Craigie: Yes. Will you expand on the conditions—

The Convener: I asked whether your question is about good neighbour agreements.

Cathie Craigie: It is.

The Convener: If it is not—

Cathie Craigie: Okay.

Ms White: I want to pick up on what the convener said about good neighbour agreements, which was interesting. I had a meeting on that subject. The convener mentioned that if a developer signs a good neighbour agreement, they will have a right to appeal. We must examine that proposal carefully.

The Convener: We have covered that point.

Ms White: You said that good neighbour agreements could be used specifically to deal with opencast mines, but could they be used for other developments?

The Convener: I do not think that I said that.

Ms White: I am sorry; I know that you were speaking about your own area.

The Convener: I used an opencast mine as an example.

Ms White: I just wanted clarification and I have now got it.

The Convener: I think that the bill makes it clear that good neighbour agreements could cover any kind of development.

On enforcement, you have given us some helpful suggestions about conditions. One of the big concerns of communities is that, often, far too many conditions are attached to planning applications, which makes it difficult for local authorities to check whether they have all been enforced. Would there be some merit in limiting the number of conditions that can be placed on an application, to ensure better compliance? How much use is likely to be made of temporary stop notices? Unfortunately, my experience is that local authorities are sometimes reluctant to use temporary stop notices because of the costs that might arise as a result of their being legally challenged in the Court of Session.

Graham U'ren: I served a stop notice about 30 years ago. It was an enormous case and at the time I was trembling with fear, but fortunately I survived.

Your first question was about the enforcement of conditions. We must couple our consideration of that issue with the business of the start notice. A start notice would require authorities to order their conditions into those that needed to be purified by the completion of the development and those that would have continuing relevance. Authorities are told when a development has started so that when it has been completed they can decide whether the work has been done in accordance with the consent. The conditions of continuing relevance present different issues and might give rise to enforcement. Distinguishing between the conditions that relate to the completion of a development and those that are of continuing significance is a highly useful discipline.

It is hard to say whether it is possible to reduce the number of conditions that are attached to planning applications. Through the culture change agenda and by working with the Executive, the profession might eventually develop in good practice ways of rationalising conditions, but that will be difficult. It is not for no reason that conditions have tended to get longer and more numerous over the years.

Temporary stop notices appear to have been designed to get round the problem you identified and which I have encountered. An authority will serve a stop notice in conjunction with an enforcement notice only if it is absolutely sure that it will not get stung for compensation when it transpires, for example, that the hold-up was the result of the enforcement notice not being properly phrased in the first place. A temporary stop notice will last for a much shorter term.

Perhaps I should write up my experiences on the case I mentioned. Although it was an extremely complicated case that presented us with many difficulties, no compensation was payable. I have always felt that we should find ways of encouraging authorities to use the legislation to the full. I definitely think that temporary stop notices will be a great help in overcoming authorities' trepidation.

Richard Hartland: Sometimes, reams of conditions are attached to planning permissions, but they are necessary because the method statements have to be written down somewhere. Information that governs how an applicant intends to develop a site or to extract material must either accompany an applicant's planning application or be set down in a legal statement somewhere. That information transfers into the conditions in the planning permission, which we can enforce. If something that is in a condition is not adhered to, we can apply a breach of condition notice. That has been a highly effective change to the enforcement legislation in recent years.

A breach of condition notice is easier to pursue than an enforcement notice because there is no right of appeal. A standard condition that we apply that has never been challenged—it would be interesting if it were challenged—is that a project must be implemented in accordance with the terms of the planning permission. If it is not, a breach of condition notice can be issued immediately. It is not an enforcement matter. We have used that to good effect.

What was the other aspect of your question?

The Convener: The other aspect was about stop notices.

Richard Hartland: I share Graham U'ren's experiences in that regard. Often, there is fear and trepidation about serving stop notices because of the potential compensation claims. A stop notice often does not do what it says. I frequently get tangled up in knots trying to tell a community or a group of local residents that a stop notice will not stop the development because there is a right of appeal against the accompanying enforcement notice. As a result of that, people lose faith and confidence in the system. That needs to be rectified. A temporary stop notice that says, "Stop the development until we get matters sorted out or understood" would be much more effective.

Euan Robson: I want to talk about the auditing of planning authorities' performance. Do you think that that is a welcome development? If so, who should carry out the auditing?

Steve Rodgers: The proposals regarding assessment of our performance and decision making are welcomed. That is part of the on-going culture change that has been happening in local authorities for some years. We are much more conscious than we were of our performance and our requirement to demonstrate to the public that they are getting best value from the services we provide.

As to who should undertake the auditing, at the moment, the planning audit unit in the Scottish Executive carries out a similar function. The proposals that are set out in the bill are aimed at beefing up that role, and I welcome that.

I flag up the fact that there is no attempt to reflect or to tie the legislation in to the best-value regime that we are already all engaged with. That regime is about continuous improvement and trying to find new and better ways of doing things. We all have action and improvement plans for our services and I would not like to think that the new regime will fail to integrate with the legal requirement in the Local Governance (Scotland) Act 2004 for us to participate in the best-value arrangements.

You might return, later in your consideration of the bill, to how the relationship should be conducted. Is it to be a relationship of equals, whereby it would be almost like having a critical friend offering advice, guidance and pointers as to best practice and how things should be improved? Or is it to be a big-stick approach, with people having to do things a certain way or else?

The concerns that I have relate to the fact that the bill provides for ministers to issue a direction requiring the planning authority to take such action as they specify in response to what is essentially an audit report. That goes way beyond many of the provisions in similar legislation relating to other functions, such as housing.

There has to come a point at which it is up to the local authority to take the necessary action at a local level, bearing in mind that some recommendations might have resource implications that require local reprioritisation. How can such things be addressed in response to what will effectively be a ministerial direction to make certain changes to the way a service is delivered? I would like to think that that would be unnecessary and feel that that part of the bill should be recast in a spirit of co-operation and working together.

12:45

Graham U'ren: There are two proposed new sections of the Town and Country Planning (Scotland) Act 1997 that relate to the assessment of an authority's performance. The first is a catch-all about all functions under the planning acts; the second is specific to development management and the handling of planning applications. Our concern is roughly similar to that which Steve Rodgers has just expressed, but more in the context of what we are trying to achieve. The culture change question is about the plan-led system. If we have an effective system, issues of efficiency should tend to follow rather than be the subject of the big stick all the time.

We are seriously considering whether proposed new section 251B of the 1997 act, which is specifically on development management, could just be deleted, as the power would still exist as a

general power in proposed new section 251A. That would avoid emphasis being placed on the efficiency of the process, which has been a performance measurement in planning—the only performance measurement—for 25 years. We ought to be measuring planning on the success of the outcomes and how it helps society to go forward. We would change nothing, in terms of the powers that would be available, if we just deleted proposed new section 251B.

Euan Robson: That is helpful. Thank you.

Let us turn briefly to ministers' powers to set fees and their provision of grant aid to bodies that assist individuals and communities in making their case in development matters.

Are you content with the fact that ministers will set fee levels? Do you think that fee levels should be set on a single, national basis? Is there any room for local discretion to reflect market circumstances? Do you also think that the level of grant aid that is available to groups that assist others in making representations is adequate? Should it be extended beyond Planning Aid for Scotland, for example, to community groups? If so, how would you go about that?

Graham U'ren: The principle is terribly important. We welcome section 28, which deals specifically with the provision of assistance and advice in the planning system. Other powers are available and are used, but they focus on priorities under other budgets, on wider programmes and so on. We very much welcome this specific provision.

We also welcome the recent increase in the level of support for Planning Aid for Scotland; as a supporter of the organisation, we want it to continue to develop. It is important that it should develop as a partner in the whole effort and that it should change to reflect changing needs. Not only should its capacity be increased; it should change in response to changing needs. Those changes may well involve different ways of working with other community-type representative groups.

Whether we can extend the provision to the resourcing of other types of groups, especially at the local community level, is a big issue for discussion and it should be considered in parallel with the current consultation on the role of community councils. The one organisation at the local level that has a degree of statutory recognition and recognition within the planning system—it has a statutory right to be consulted—is the community council. A number of community councils are extremely effective in planning and in other areas; however, others are not, and in some places there are no community councils.

Looking at the map of community councils, we need to pursue a strategy that will ensure a general increase in their efficacy as regards their engagement with the planning system. That issue must be considered before we address the idea of directing more funding to community councils; yet, that idea should be urgently addressed. If solutions can be found with regard to community councils, perhaps we can look beyond that. The big question in my mind, however, is what we should be doing about community councils.

Richard Hartland: May I respond to the question on fees? Fees for planning applications need to be levied at a national level so that there is consistency: it should not be cheaper to apply for planning permission for something in one part of the country than in another. The fees should better reflect the cost of processing planning applications and the cost of monitoring the implementation of the development to achieve quality on the ground.

That takes me to the concept of processing agreements. The idea of increasing the fee, with a payback if we fail to meet an agreed timetable, is sound in some respects but a bit gimmicky in others. If the fee is to be increased to reflect the cost of processing applications, why should it not be increased across the board? That is a fundamental question. In some respects, I agree with processing agreements and will wait to see how they can be implemented, but they raise other questions. For example, a local authority may not be accountable for not delivering the permission or the refusal on time—other parties might have contributed to that failure. What are the punitive elements in that case? Local authorities will fight tooth and nail against repaying half the fee if they are not responsible for the delay. If a statutory consultee has not given us adequate or timeous advice, is there a punitive element in there? That needs to be built in or examined further.

The development industry—although it will speak for itself—would generally welcome an increase in fees if that brought about a quicker, more predictable decision. The big fears for the industry in relation to delays are banking and loan charges and the possibility of having to lay staff off while a planning proposal is going through the process.

The Convener: Let us move on to planning resources. Do you think that there will be sufficient capacity in local authorities to meet the new obligations that will be placed on them by the bill? Does the financial memorandum to the bill provide a realistic assessment of the financial costs to local authorities that will result from the bill? My final question is about people resources. Are there sufficient planners in Scotland to implement the obligations in the bill? Is there a shortage in certain areas—especially of public sector planners—or is there a general shortage of planners in Scotland?

Steve Rodgers: Those are fundamental questions, the answers to which will determine whether the new, modernised planning system can be delivered.

The first point that you raise is whether we believe that there is sufficient capacity in the system just now to cope with the additional burdens that may be imposed as a result of the changes. We are actively looking into that in partnership with the Executive, the Convention of Scottish Local Authorities and RTPI, through the planning finance working group, which has probably already been mentioned to you. In the context of dealing with the increasing burdens and strains that are being placed on the system, I doubt very much that there is sufficient capacity within the system—otherwise, we would not be receiving complaints about out-of-date plans and about applications not being dealt with quickly enough.

In many ways, we have been forced, over the past four or five years, to reprioritise our existing resource away from plan making and away from some implementation activities towards development control. The first aim of that reprioritisation was to deal with the large-scale increases in the number of planning applications and in development pressures generally. Secondly, we were responding to the performance pressures that have been put on us to achieve targets. Those targets, as Graham U'ren has said, have focused on the determination of planning applications. Under the new system, there needs to be a fundamental review of the use of performance indicators and performance targets, with the introduction of more qualitative as well as quantitative approaches to measuring how well the system is doing.

Moving on to your second question, the financial memorandum contains an initial estimate of the likely impact on local authorities. We have some reservations about a number of the calculations and figures and we are currently discussing those with the Executive through its working group. Hopefully, there will be an opportunity for our concerns to be addressed. In essence, those concerns are that the potential for savings within the system, as set out in the financial memorandum and as previously set out in the report that was commissioned from Ove Arup and Partners—I will need to get this the right way round so that I do not shoot myself in the foot—has been overestimated, and that the potential for new burdens has been underestimated in many areas.

Richard Hartland: The shortage of planners is generally accepted across the board. There is also a shortage of skills, and we need to reappraise that situation if we are to attain the required quality of development and of processing. To achieve that, we need different skills. An awful lot of the planners who are coming out of universities and colleges now are going into the private sector. We must ask ourselves why that is. It is part and parcel of the culture change. I imagine that the confrontational aspect of planning, as we see it in our everyday lives, has got back to the planning schools, and people do not want to do that for a living; they would rather do things another way.

If we can change the culture, and if we can change the relationship between planners, the development industry and communities, making it stronger and more all embracing, planning will become sexy again, as it was in my day. That is what we should be trying to achieve. Fundamentally, we need to address the skill base of planners.

Graham U'ren: Just over 60 per cent of our membership work in the local government planning service. That proportion is diminishing, because planners are finding positions in a much wider variety of areas of activity. That is not just in the consultancy sector, for example, where a lot of people are specifically advising on the statutory planning system, but in many other areas away from the core of statutory planning. That is partly because spatial skills are recognised as very useful. It is difficult for us, as a profession, to measure our supply side against the exact need of the statutory planning system in local government. That is the crunch as far as the bill is concerned.

There are a number of other measures that we can apply, however. The output from planning schools in Scotland and throughout the UK is increasing. Our membership has been increasing by about 10 per cent annually over the past two or three years, although one of the reasons for that is that, as a professional institute, we have reinvented ourselves quite successfully in terms of what we are about and through offering a better deal for our members, to the extent that we think our retention is now better. That is not a measure in itself. There is no doubt, however, that the number of planners and the commitment of the profession is increasing in quantitative terms. The question is whether that increase is fast enough. Undoubtedly, it is not.

13:00

There is a worrying scenario that is similar to that involving the transitional period for culture change and introducing the new system, which we have discussed. We are worried about the five-year period that it will perhaps take to resource up completely. We know that there is a significant shortfall in resources and perhaps we will have to consider significant measures. The London boroughs, for example, had great difficulties with

recruitment and housing costs for many years, but they have now been inundated by planners from Australia and New Zealand, who go to London for two or three years and then return home. I assume that they find cheaper accommodation than do people who are looking for permanent posts. We may have to consider such measures.

As the European Union has expanded and our engagement with eastern European countries through the European Council of Town Planners and other bodies has increased, the serious planning efforts in eastern Europe have interested us. Countries in eastern Europe might want to steal people from us, but perhaps there are resource and recruitment possibilities there that could help us through.

The points that have been made about improving quality are extremely important. The more we do to improve quality, the better we can manage the process and the more we will be able to differentiate between the use of qualified resources and the use of less qualified resources in the various jobs that must be done.

I tend to agree with what was said about the financial memorandum—I do not think that we have the full story yet. However, the financial memorandum is important because, as far as I can remember in the planning system, it is the first time that a financial memorandum or regulatory impact assessment has recognised that proposals have financial or resource implications that must be addressed. I hope that as the bill progresses, the Executive's finance working party in particular will come up with a clearer picture of what the implications are. The consultancy work that has been done in the past couple of years has made it plain that it is difficult to measure what exists, let alone what we need to provide. We should never forget the base from which we are starting. We think that the resources that are available are inadequate, even before the bill's new provisions come into force.

Ann Faulds: On resources, if a charge is being imposed on an applicant to cover the cost of processing an application, I wonder whether imposing charges on objectors to cover the costs of processing their objection should be considered. There is a precedent for such an approach in the parliamentary process, as a person must pay to submit an objection to the Parliament.

Mr Home Robertson: That is an interesting point.

The Convener: Thank you. We will consider that.

Mr Home Robertson: In our discussions on Friday, a point about advertising emerged. We are all familiar with the tiny typed notices that appear on telegraph poles from time to time, which nobody reads, and some of us notice the probably rather expensive schedules on the back of local newspapers that are supposed to give notice of planning proposals. What do such things cost? Are there better ways of advertising planning proposals?

Richard Hartland: Two or three issues are encapsulated in what you say. We must acknowledge that technology is developing. It has been proposed that all applications should be advertised in the local press. I will be quite happy with that if we are allowed to charge for adverts and recover our costs, which will be substantial in West Lothian—I hate to think what they might be in cities.

The period for responding to applications must be rationalised. I am afraid that Joe Public does not know why there are 14 days to make a submission on one application but there are 21 or 28 days to make submissions on others.

The wording of adverts must also be rationalised. I have debates with colleagues about our inability to change the wording of adverts because it is in statute. I cannot understand the old-fashioned wording of adverts, which needs to be made more customer friendly. We have gone ahead and been more customer friendly in any event; we will wait and see whether anybody challenges us as a result of understanding our adverts better. New technology will perhaps make that a temporary measure. Applications to a growing number of authorities are available on websites. Not only lists of applications are posted, but the full documentation. In West Lothian now, someone can look up any application and see all the documentation that relates to it. That is the way forward. It allows people to interrogate planning applications from a distance—from the comfort of their home or business. We must proceed quickly in that direction.

The Convener: In a number of petitions that have come before the committee, we have been asked why health considerations are not taken into account when a planning application is considered. Do you as planners have a view on that?

Richard Hartland: Are you referring to health implications that are the direct result of a development?

The Convener: Yes.

Richard Hartland: I see the point. We get environmental health advice on many aspects of development—noise, dust, fumes and so on. Those health impacts are taken on board at the moment. We can and do refuse applications on that basis. I am wondering what the broader impact on health might be. A planning application

for something that causes a lot of public angst might be seen as creating a great deal of stress and anxiety. Is that determined to be a health issue? I can see the logic of that, and we need to minimise the anxiety and stress that the development process can create.

The Convener: The issue that has been raised in petitions is that at the moment health grounds are not regarded as a material planning consideration. Petitioners want to know whether that may happen in the future. Does Graham U'ren have a view on that?

Graham U'ren: The issue is not whether health is a material consideration, but whether the planning authority is in a position to make what amounts to a value judgment about health. All planning decisions are based on value judgments. Policies are there to be interpreted. However, if there is a black-and-white situation—something is or is not dangerous to health—it is subject either to the environmental regulatory system or to the health regulatory system. It is a scientific question.

Traditionally, the planning system has avoided scientific decision making. It is used to putting in place checks and balances and assessing competing factors. At the end of the day, a value judgment is made. If there is a black-and-white case relating to health, someone with scientific authority should advise the planning authority, so that the authority can take the issue into account, instead of being forced to make a value judgment based on the information that is given to it. At the moment, the radiation protection division of the Health Protection Agency provides a certificate in certain cases. If that certificate is produced, de facto the planning authority has nothing to take into account, apart from the fact that the certificate exists. Someone else makes the judgment on scientific grounds.

We should not bring radiological issues into the planning system simply as another matter for the planning authority to judge. Without a scientific service that is designed to look at such issues, no local authority or planner is in a position to make a value judgment on them. The system depends on there being scientific advice and a parallel procedure that indicates whether something is or is not okay before it is taken into account.

Cathie Craigie: I ask Graham U'ren to provide a bit more detail. Some of the people who have petitioned the Parliament have been supported by my constituents. Their particular interest is in telecommunications applications. An upgrade seems to be under way in all constituencies. People are concerned about the health implications of living close to the new apparatus. At the moment, if someone submits an application for a large development, that application must be accompanied by an environmental impact study or assessment. Is there a mechanism in place that requires the telecommunications industry to submit a health risk assessment or study to the local authority when it is applying for planning permission? If there is not, would it be possible for us to introduce such a mechanism, similar to the environmental impact study?

Graham U'ren: Bear it in mind that environmental assessment does not make the decision; it advises the decision. The decision is based on a value judgment made by the decision maker, taking into account the results of the environmental assessment. None of this is the exact science that we are looking for. If we need exact science to determine the health issue, we need the scientific body with the right authority to provide input on that, to which the planning authorities can respond accordingly.

I am sorry; I should have read up more before coming here today. However, in England there is a bill going through at the moment on this very issue. I was thinking about the consequences of that if it comes up here. I think that it is called the Telecommunications Masts (Planning Control) Bill. The first section is about planning legislation and the introduction of something called a precautionary notice, or similar. Subsection (2) relates to the telecoms system, which is a reserved matter and will, therefore, apply throughout the UK, and contains provisions requiring that information be made available. I am sorry that I cannot be more specific, as I did not have the opportunity to research the matter before coming here. It may be worth looking at what is being done in England.

Cathie Craigie: Thank you. We can follow that up.

Steve Rodgers: The debate about whether health should be a consideration is focusing on telecommunications issues; however, once we go down the route of introducing health as a material factor, where do we stop? Would we have to refuse planning permission for change of use to fast food takeaways because fast food is known to be unhealthy?

Mr Home Robertson: Good idea.

Steve Rodgers: Would we refuse planning permission for change of use to off-sales premises because of the damage that alcohol does to health? What is the competency of the planning system to introduce considerations that are currently regulated by other organisations that are much more expert in such things than the planning authority? Planning should focus on the issues that it concerns itself with: the use and development of land. Once we went down that route—albeit with good intentions—we would open up a whole can of worms.

Patrick Harvie: I agree entirely that we need to separate out some issues. Alcohol sales are licensed, and it is for the licensing system to decide whether there are too many off-licences in a town or village. That is not a planning matter.

What the petitioners are looking for is an indication that planning authorities have the discretion to be able to say that the science on a certain issue is not clear. If, for example, there was no proven link between a potential development and a health consequence but a sufficient number of people were concerned about the possibility of a risk, the petitioners would want the planning authority to be able to use that as a reason not to back the application or to delay it while further work was done to reassure people. Can anybody on the panel tell me whether that is already the case? Can a planning authority take that approach? Would planners be happy to make decisions on that basis?

Richard Hartland: At present, such issues tend to focus around the telecommunications industry.

Patrick Harvie: Not exclusively.

Richard Hartland: No, not exclusively. In making our recommendations to planning committees, we have to bear it in mind that, if the planning application is accompanied by a certificate from the International Commission on Non-Ionising Radiation Protection, that is a declaration that it is above the standard that is the criterion for safety. A response to that would be to ask whether that criterion was good enough. In many instances, the answer from the general public is that it is not good enough because it has not been proven definitively that a development would be safe. Consequently, such proposed developments cause as much heat and debate in council chambers as any other applications.

If an application is accompanied by an ICNIRP certificate—all other things being equal, in terms of visual amenity and so on—I am obliged to recommend that the application should be approved. Many such applications are not approved because the planning committee is persuaded by the local community that, although the standard is not unacceptable, it must be questioned. However, an analysis of the statistics shows that many an application that a planning authority refuses is granted on appeal, because the material consideration was that it was accompanied by a certificate.

13:15

Patrick Harvie: I am sorry, but I will briefly pursue the matter. People may express a concern about an aspect of technology that is not part of the assessment for a certificate. For example, the concerns about the terrestrial trunked radio system, which have not been proven, relate to aspects of emissions that certificates do not cover. Certificates can give assurance on the power or strength of a signal, but not on specific issues that some people raise, such as fluctuations. Do planning authorities have the flexibility and discretion to say that a certificate is not enough on which to base consent to a planning application?

Richard Hartland: As a planning adviser, I have to say that a certificate is enough, but a politician might argue with that and say that it is not and that we should do further research, whether or not that is done via a planning application. Sometimes I am instructed to look into matters further and sometimes the certification is satisfactory.

The Convener: All our questions focused on the committee's interests and I am conscious that you might have wanted to say other things but were not given the opportunity to do so, so I offer you the opportunity to write to us with any further points. Thank you very much for your co-operation and assistance and for staying so long—we did not expect the session to last until now.

The meeting will be suspended briefly to allow our witnesses to leave.

13:17

Meeting suspended.

13:18

On resuming—

Petitions

Schools Projects (Open Space) (PE906)

Local Plans (Housing) (PE907)

The Convener: Agenda item 2 is on two new petitions that the Public Petitions Committee has referred to us for our consideration. The first petition is PE906 by Murray Dickie, on behalf of Torbrex community council, which calls on the Scottish Parliament to urge the Scottish Executive to institute a moratorium on all public-private partnership school projects that are still at the planning stage or which are proposed, until a proper audit of open-space loss has taken place and strict new guidelines have been issued to all Scottish councils on present and future PPP school projects, especially in relation to open spaces and environmental sustainability.

Petition PE907, by Fionn Stevenson, on behalf of Tayport local plan action group, calls on the Scottish Parliament to urge the Scottish Executive to review the requirements on local authorities to demonstrate that they have fully, financially and transparently accounted for the need for inadequate local services to be upgraded prior to the development of new housing in their proposed local plans, according to the relevant regulations and other statutory instruments that relate to the production of local plans under the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983 (SI 1983/1590) and the Town and Country Planning (Scotland) Act 1997.

It is proposed that the planning-related issues contained in the petitions be included during the committee's consideration of the Planning etc (Scotland) Bill or of the related planning guidance. As members have no comments I will take it that they are content with the proposal. We will consider the issues in relation to the Planning etc (Scotland) Bill and other relevant planning guidance, but we will take no further action in relation to the petitions.

Item 3 on the agenda is also on petitions, and concerns how the committee will consider the inclusion of planning issues from previous petitions in its scrutiny of the Planning etc (Scotland) Bill at stage 1. The paper that has been prepared by the clerks lists a number of planning-related issues that have been raised in petitions referred to the Communities Committee. Members are invited to comment on the issues and on the recommendations that are made in the paper with a view to agreeing a course of action for considering the issues in the context of the bill.

Patrick Harvie: The paper is a useful crib sheet, if you like, which will serve us well during the whole course of our discussions on the bill. I thank the clerks for their work in putting it together.

The Convener: I agree. We have had many petitions on the subject and the paper is what we all needed. We have said that we will consider the petitions and it is helpful to have a written account of all the issues, so that we can keep a note of them and refer back to them, when appropriate and necessary, during our questioning of witnesses.

Patrick Harvie: I take it that we have an electronic version of the paper.

The Convener: Yes, we do.

Mr Home Robertson: The issues raised tie in with the questioning that we have just conducted with the last set of witnesses about telecoms masts. I am happy with the recommendation that the committee should bear them all in mind at relevant points during our consideration of the Planning etc (Scotland) Bill. If the clerks could jog our memories when anything relevant comes up, that would be appropriate.

The Convener: I am sure that the clerks will jog our memories, but we also have a responsibility, as conscientious committee members, to jog our own memories and remember that we have this helpfully prepared crib sheet. As we are questioning witnesses on particular areas of the bill, we might wish to give some consideration to the points that the various petitions have raised.

Mr Home Robertson: Those members who are still present are very conscientious.

The Convener: Indeed we are. I am grateful to members for their continued attendance today.

Meeting closed at 13:22.

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