COMMUNITIES COMMITTEE

Wednesday 8 February 2006

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Wednesday 8 February 2006

COMMUNITIES COMMITTEE
5th 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:

Mike Culshaw (Scottish Executive Development Department)
Stuart Hay (Scottish Environment LINK)
John Mayhew (Scottish Environment LINK)
Anne McCall (Scottish Environment LINK)
Jim McCulloch (Scottish Executive Development Department)
Lynda Towers (Scottish Executive Legal and Parliamentary Services)
Bill Wright (Scottish Environment LINK)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Communities Committee

Wednesday 8 February 2006

[THE CONVENER *opened the meeting at 09:34*]

Interests

The Convener (Karen Whitefield): I open the fifth meeting of the Communities Committee in 2006 and remind all those present that mobile phones should be turned off.

I have received a number of apologies. Tricia Marwick is unable to attend today and her substitute, Sandra White, will appear at the committee slightly late—I understand that she has to attend the Public Petitions Committee first. Scott Barrie is also unable to attend. I welcome Christine May to the committee as his substitute and ask her to declare any interests.

Christine May (Central Fife) (Lab): For the purposes of the matters that are under discussion today, I declare that I am a trustee of the Fife Historic Buildings Trust.

The Convener: I understand that John Home Robertson also wants to make a declaration.

Mr John Home Robertson (East Lothian) (Lab): As you might be aware, convener, I am a member of the Paxton Trust, which looks after a certain historic building.

The Convener: The final apologies of the day come from Euan Robson, who is also unable to attend.

Petitions

Planning System (PE916)

Planning System (Amenity Woodland) (PE918)

09:36

The Convener: The first agenda item is consideration of two petitions that have been referred to the committee. The first is PE916, which was lodged by Scottish Environment LINK and the Association of Scottish Community Councils. It calls on the Scottish Parliament to seek to secure real rights for all in the planning system by ensuring that, rather than introducing more opportunities to express opinions, the Planning etc (Scotland) Bill establishes real and effective rights for people to have their views on planning decisions and conditions taken into account through the introduction of a limited third-party right of appeal in the planning system. It also calls on the Parliament to ensure that all strategic planning decisions that are taken by Government at the national level, including on the national planning framework, are open to challenge and public inquiry.

PE918 was lodged by Bill Lobban, on behalf of the Dalfaber action group. It calls on the Scottish Parliament to urge the Scottish Executive to review the protection that is afforded to amenity woodland within the current planning system with a view to ensuring that the views of local people who enjoy visiting such woodland are given sufficient weight in the planning process.

It is proposed that the planning-related issues that are contained in both the petitions be included in the committee's consideration of the Planning etc (Scotland) Bill. Do committee members have any comments to make on the proposal?

Mary Scanlon (Highlands and Islands) (Con): Dalfaber is close to Aviemore and I have already received some representations from the action group. I am interested in ancient woodlands and I notice that section 26 of the bill contains provisions on the preservation of woodlands. Therefore, we will have an opportunity to address the points that are raised in PE918 when we hear from the minister later in stage 1 or at stage 2.

The Convener: So you are satisfied that we can return to the matters in the petitions as we consider the Planning etc (Scotland) Bill. Do any other committee members wish to comment?

Patrick Harvie (Glasgow) (Green): I express my thanks to the petitioners for providing extremely clear and well-put-together supporting information. Last night, I noticed that, in the

material from Scottish Environment LINK and the Association of Scottish Community Councils, reference is made to a couple of attachments that do not appear in the committee papers. Could those be provided?

The Convener: They can be. That will be addressed.

Are we agreed that the issues that are raised in the petitions be considered in the committee's deliberations on the Planning etc (Scotland) Bill but that we take no further action on the petitions?

Members *indicated agreement*.

Planning etc (Scotland) Bill: Stage 1

09:39

The Convener: Agenda item 2 is stage 1 consideration of the Planning etc (Scotland) Bill. The committee will hear evidence on the bill from two panels of witnesses.

I welcome the first panel of witnesses, who represent the Scottish Executive inquiry reporters unit. We have been joined by Jim McCulloch, who is the chief reporter, Mike Culshaw, who is the deputy chief reporter, and Lynda Towers from the office of the solicitor to the Scottish Executive.

I thank you for appearing before the committee. We would like to pursue with you a number of specific questions, which we would be grateful if you would address. We accept that you might want to raise other issues with us and you will be given an opportunity at the end to put any of those on the record.

Will the proposals in the bill ensure that the planning system is seen to be less formal and less adversarial and that there is more accessibility for members of the public?

Jim McCulloch (Scottish Executive Development Department): Good morning. Ministers' objectives are to improve the efficiency of the planning system and to promote greater inclusion for the public and interested parties, so a balance must be struck. We expect the proposals to result in a less adversarial and more informal approach that will benefit all participants. Under the development plan system, the reporter will examine the council's statement on community engagement to determine that it has done what it said it would do in the process. If it has, the reporter will move on to consider objections to the development plan. In future, the word "examination" will be used in development planning rather than the word "inquiry". That is intentional. Reporters have been experimenting with changes in culture in the past few years and the policy signals that those changes will become normal practice. There will be greater use of hearings—informal discussions that are led by a reporter and are usually held around a table—and a reduction in the use of adversarial inquiry processes that involve formal cross-examination. Formal processes will be used in the few cases in which such an approach is needed to get to the bottom of difficult and complex issues.

The Convener: In what types of case do you expect the more adversarial approach to be used?

Jim McCulloch: In many cases, we expect a hybrid approach to be used. There will be a

continuum of approaches, from written submissions and hearings to full, formal inquiries. Different processes will be used to deal with different aspects of the evidence in individual cases. For example, during consideration of a proposed superstore there might be difficult technical evidence about retail capacity and retail impact. The arguments on that would be largely professional and technical and we expect that they would be dealt with in a formal inquiry process so that there could be detailed forensic examination. However, when we moved on to consider people's opinions about the effect of the proposed development on the local area or the effect of traffic on nearby residential areas, I do not think that formal cross-examination would be appropriate and the process could be intimidating if the evidence was required to be presented in that way.

The Convener: Will the inquiry reporters unit's decision on which procedure is to be used be transparent, so that there is confidence in the system?

Jim McCulloch: That is our intention. Our current approach is relatively inclusive and all the material that is used in reaching the decision is open to everyone involved. That inclusion will be improved by e-enablement, because we intend to post the material on the web as well as make it available in paper form. We hope to fulfil the requirement for transparency.

The Convener: Is it possible for the inquiry process to take less time?

Jim McCulloch: We certainly hope so, and that is the objective. The reduction in the oral process will benefit everyone who is involved. If more material is covered by written submissions and informal hearings, there will be a time saving in comparison with a formal inquiry.

The Convener: How will reporters assess whether local authority planning departments have consulted properly and effectively?

Jim McCulloch: I ask Mike Culshaw to respond to the question.

Mike Culshaw (Scottish Executive Development Department): Planning authorities will be required to prepare a consultation statement. In preparing their development plan scheme, they will have to state the public consultation measures that they will engage in as part of the process of preparing the local plan. When they complete it and submit it for examination, we will consider whether they have carried out what they said they would do and assess it against national guidance—a planning advice note on community engagement is already in preparation—and against any views that people may have put forward during a plan's consultation period. One element of the bill is that the failure to consult properly can be a showstopper, resulting in ministers returning a plan to an authority to ask it to do it again. We will consider such elements early on in the process, before we start the main inquiry.

09:45

The Convener: Do you expect there to be dialogue early on between the inquiry reporters unit and a local authority to ensure that there is proper consultation with communities and that their interests are taken into account?

Mike Culshaw: Dialogue needs to take place before the inquiry reporters unit becomes involved. That is for the authority to do. We will become involved in local plans—now and in the future—after the period for consultation and objection has taken place. At that stage, we will move and hold a public inquiry. We will not be involved in dialogue with an individual authority before that. That will be a matter for the planning advice note and for ministers.

Christine May: We are talking about the involvement of the inquiry reporters unit in development plans. Do you accept that you will be asked to judge matters at a stage when views will already be polarised? How will that be done in cases in which an authority, in finalising its development plan, chooses not to accept your recommendation and departs from it? Will you expand on the administrative and the political processes that might come after that?

Mike Culshaw: That will not be a matter for us. If a planning authority, having received a report from the inquiry reporters unit, does not wish to accept any of its recommendations, it will then need to make a case to ministers. Ministers will decide whether the case has been made properly.

The "Modernising the Planning System" white paper gives three instances in which it is acceptable for a planning authority to depart from a reporter's recommendation. The first is if it does not comply with the strategic environmental assessment that has been carried out on the plan. The second instance is if it is contrary to national policy, the national planning framework or the strategic development plan. The third instance is—to put it bluntly—if the recommendation is just plain daft. That means if the reporter's recommendation does not make sense and does not follow from the case that has been put to him or her.

Jim McCulloch: I think the exact term is "flawed reasoning".

Christine May: Those are very clear-cut areas but cases are never that clear cut in reality.

Nuances, local issues and political considerations must always be taken into account. Do you have a feel for how the process will be finessed to take that into account?

Mike Culshaw: At this stage, I do not think so. That will be very much a matter for ministers and advisers, once a council makes a submission and gives evidence in support of that.

Patrick Harvie: You mentioned the process of examining development plans. You may know that the committee has been made aware of calls for a similar process for the national planning framework. If the committee were convinced of that case, would that be an appropriate function for the inquiry reporters unit, given that the national planning framework is an Executive creature?

Jim McCulloch: As I am sure you know, I cannot answer for ministers. We deliver a service on behalf of ministers. If planning legislation were amended to make such a provision, we would have to respond because we provide the service. However, the eventual form of the Planning etc. (Scotland) Bill is a matter for the minister and Parliament to decide.

Christine Grahame (South of Scotland) (SNP): I want to go back to what is obviously a conflict of views between you and the Faculty of Advocates on the role of public inquiries. I no longer practise, so that connection is not an influence, but they pretty well persuaded me that they do not always represent only the big bad guys—the developers—but often represent communities. Communities often feel that they want a public hearing so that issues are properly tested. I know that the written evidence from the Faculty of Advocates was similar to its oral evidence. Will the system of written submissions still be sufficiently robust, not only to test the issues, but to satisfy communities?

Jim McCulloch: I anticipated that that might concern the committee. I understand the faculty's concern, but ministers do not share it and neither, I understand, do many members of the Scottish Parliament. It is certainly not shared by some of the constituents with whom we have contact.

Christine Grahame: With respect, we really do not know what other MSPs think. I certainly do not.

Jim McCulloch: Put it this way: comments that I heard made in committee led me in that direction. However, the view is also not consistent with the responses that we got following the consultation on modernising public local inquiries. We asked:

"Should hearings practice be imported to planning inquiries when it represents the most effective means of determining the matters in dispute?"

Such a proposition would move us not necessarily towards written submissions but away from an adversarial process. The responses to the question showed unqualified support for the proposition, with 42 per cent in favour of it. Only 9 per cent of responses indicated outright opposition and 49 per cent indicated a mixed response, depending on the process that might be adopted.

Christine Grahame: I am sorry; 42 per cent—

Jim McCulloch: In favour.

Christine Grahame: Is there a list of the respondents somewhere? Sometimes 42 per cent can represent all individuals, and the 9 per cent could represent a large group.

Jim McCulloch: There is a statement on the "Modernising Public Local Inquiries" consultation paper. We can certainly look into that.

Christine Grahame: I am interested to know who responded.

Jim McCulloch: You will be able to see the extent to which the information was disaggregated.

Christine Grahame: Yes, thank you.

Jim McCulloch: Additionally, when the dean of the Faculty of Advocates, Roy Martin, gave evidence to the committee a week ago, I was heartened to hear him say of informal hearings:

"I emphasise that that does not mean that a hearing is in principle inappropriate or that it should not happen in as many cases as possible."—[*Official Report, Communities Committee*, 1 February 2006; c 2995.]

He went on to mention the hard cases, which we touched on earlier. In our view, it is the hard parts of cases to which the formal, adversarial process should apply. Ailsa Wilson also said that local residents want to have their day in court. However, we are not a court; we are an administrative tribunal. There should be no suggestion of our running court processes.

Christine Grahame: I think that that was a metaphor for people having their say.

Jim McCulloch: They are advocates, though.

Christine Grahame: You will have to excuse me, as I have another meeting to go to and so will have to leave at half 10. I want to move on to the impact of transferring appeals for local developments to local review bodies, which is another issue that the Faculty of Advocates raised—heaven forfend that I should be speaking up for the faculty or the Law Society of Scotland again. The issue is really about proper representation, people having a proper hearing and the implications of the European convention on human rights. Will you comment on that?

Lynda Towers (Scottish Executive Legal and Parliamentary Services): One should not consider the process in individual little bits; one

must consider how the whole process is put together. There may be concern about individual review bodies, but they are, in fact, one complete body, as Mr Martin recognised, and other processes are added on that mean that the Executive is satisfied that the process is ECHR compliant. However, you may want to raise the issue with the minister.

Christine Grahame: When a planning officer makes a decision, or refuses or amends an application, one will have to go back to the planning authority. There is a question of conflict of interest.

Lynda Towers: I am certainly not able to talk about the practicalities of that, but there have been cases—the Alconbury case and the E C Bryan case have been referred to—that suggest that one needs to take an overall, holistic approach and consider the whole process. Particular bits of the process might not be ECHR compliant, but the process as a whole does protect the individual and would be ECHR compliant. That is the position at present.

Christine Grahame: Except that the Faculty of Advocates took the view that the bill as a whole might be a wee bit wobbly on ECHR—I am paraphrasing—and that, if there are other patches dotted throughout the bill, there could be difficulties.

Lynda Towers: Having looked at the evidence from the Faculty of Advocates, I think that it tended to focus on individual parts of the bill rather than to consider it as an overarching operation. When the faculty has the chance to consider the bill as a whole, it might not be quite so pessimistic.

Mary Scanlon: I would like to move on to appeals. Last week, the Faculty of Advocates said that the bill is extremely complex and I find the provisions on appeals among the most complex elements of it. First, I would like to hear how you feel the proposed changes will result in a more efficient, effective and timeous appeals process.

Jim McCulloch: As I said, the proposals represent ministers' consideration of the appropriate balance between greater efficiency and greater inclusion. The process can be balanced in many different ways. The appeals provisions cannot be seen in isolation from the rest of the development management system—as it is now called. At the householder end, we are refining permitted development rights, so that the permitted development order better represents what members of the community want to do to their individual homes. Introducing local appeals tribunals will return decision making to democratically elected bodies at local level. There will be early determination of ill-founded appeals, and the entire appeals process itself—whether at the local appeals tribunal end of the spectrum or at the Scottish Executive end—will move to a review of the decision taken by the planning authority that is based in large part, if not exclusively, on the material that was before the planning authority when it reached its decision. Furthermore, the most appropriate means will be used to determine the matters in dispute between the parties, whether that involves written submissions, a hearing, an adversarial inquiry or any combination of all three. It is a package.

Mary Scanlon: I appreciate that. You have mentioned the three things that are listed in paragraphs 229 to 231 of the financial memorandum. However, I would like to ask about the reference to an appeal that

"does not merit more extensive consideration. This will result in early refusal".

Why does it not result in early refusal under the current system? Why do you need legislation to streamline the system?

Jim McCulloch: To some extent, ministers are flagging up a policy intention to behave in that way. It is arguable whether the existing process would allow them to do that. Practice, combined with the inquiries procedure rules and the written submissions regulations, means that the full process is gone through before a decision is reached. What ministers are currently doing is flagging up the possibility that they will take the material submitted by an appellant, scrutinise it and reach a full determination on the appeal at that stage, without a further exchange of material. It is not a question of sifting appeals and saying that, procedurally, they can go no further. It will be a full determination based on the information that is before the decision maker at that point.

10:00

Mary Scanlon: In your response, you raised a point about limiting the additional material in an appeal. What impact do you think limiting the introduction of additional material will have on appeal outcomes?

Jim McCulloch: The objective is to increase the certainty for communities that are engaging with the process and to stop drift and the stress that is caused by drift. When Ann Faulds appeared before you on behalf of the development industry, she put it extremely well. She said:

"I think that the intention is to stop developers from saying, 'That case did not work. Can we make up another one?'"—[*Official Report, Communities Committee*, 25 January 2006; c 2934.]

It is essentially a question of ensuring that the rolling stone does not gather moss as it moves through the process.

Mary Scanlon: Let us go back to one of the petitions that was before us today. It may not be put to the planning committee that there are amenity or ancient woodlands in a certain location, which are very important to the local community. Everybody might know about them, but that information might not be on paper. If that is not put to the planning committee, limiting the introduction of additional material could limit the community's input into the appeals process. In fact, it would be helpful to developers if all the available material was put in front of the planners to ensure that no additional material, on which an appeal could be based, could be introduced later. Is that possible?

Jim McCulloch: There is no intention to embargo additional material that is material and relevant to the outcome. The bill would allow the introduction of additional material in exceptional circumstances. I think that is correct.

Mary Scanlon: With respect, Mr McCulloch, who decides what is relevant to the outcome and what constitute exceptional circumstances? I may feel passionately about ancient woodlands, but you may think that the circumstances are not exceptional and that those woodlands are not a relevant consideration. That would take us back to square one.

Jim McCulloch: I will address that point before I answer the rest of your question. Ministers expect the development process to be fully front-loaded by developers. In other words, before developers seek planning permission—especially in the case of major developments—they will be required to engage with the community and to explain to the community the nature of the proposals for which they wish to seek planning permission. The information should be presented to the community in a way that is manageable for it, as the developers will have to demonstrate to the planning authority that they have done what they said they would do. That should also mean that the community is not taken unawares by development proposals and that the important considerations that are relevant to the outcome are before the planning authority and before a reporter if the application is appealed.

You asked who decides whether exceptional circumstances come into play. Ultimately, that has to be for the decision maker, whether it be a reporter if it is a delegated case, or the minister if the minister is deciding it. If the issue that was raised was genuinely material to whether planning permission should be granted, it would be a very brave decision maker who decided to ignore it. Such an action would open the door to an argument about whether the decision itself was unsafe and could be set aside.

Lynda Towers: Because of the front-loading of the process, one would expect, in the example you gave, the fact of there being an ancient woodland to be put in front of the planning authority. It would be difficult to say that it was not a material consideration. Ensuring that all the relevant information is in front of planning authorities when they make decisions is part of the culture change and the front-loading of the process.

Mary Scanlon: I appreciate that. I think that the operative word in what Mr McCulloch said is "should". If I have done nothing else today, I have at least raised your awareness of ancient woodlands.

The Convener: Ms Scanlon, a couple of members would like to ask questions on the same point before you continue your line of questioning.

Christine Grahame: I want to pursue this. I am not an advocate of the Faculty of Advocates, but I am looking at section 16, which defines the material that may be used in an appeal. Mr McCulloch, you used the phrase "genuinely material". You said that if a genuinely material issue was introduced at the point of appeal, it would be a silly decision maker who did not take that issue into account. However, those words do not appear in section 16. The provision is very rigidly drawn. It says that a matter cannot be raised unless

"the matter could not have been raised before that time"

or

"its not being raised before that time was a consequence of exceptional circumstances."

The Faculty of Advocates presented us with two possibilities. If that wording remains unchanged, the process will be front-loaded with so much material that it will become really complex, as developers will cover all angles before they submit planning applications. Alternatively, we could end up with a lot of challenges and two separate processes. If a developer's application was refused, they would submit a fresh application while the first was being reviewed and appealed, which would be cumbersome.

Is there not room in the bill for a provision that would be operational and suitable for all parties, which would allow genuinely material matters to be introduced and ensure that the decision maker had much greater discretion to allow new material to be submitted, subject to the protection of the rights of others? The current wording in the bill is too tightly drawn and does not reflect the interests of anybody.

Jim McCulloch: At the moment, the decision maker has wide discretion. I am generalising to an extent, but the difficulty is that when developers seek planning permission from a planning authority and that planning permission is refused, they produce a new justification for the appeal.

Christine Grahame: Absolutely. I support you in that. What I am concerned about is balance. I see the remedy that is being offered, which would protect parties and let them know exactly where they were when an application went to appeal, but you used the phrase "genuinely material", which is not used in the bill.

Jim McCulloch: No.

Christine Grahame: Should it be?

Lynda Towers: The phrase that is used in planning—which the courts have interpreted, although it has generally not appeared in planning legislation—is "material consideration". That is generally understood by the courts and by those in the planning world who, ultimately, have to determine matters. It is not possible to generalise what "material consideration" means; it is a technical term. It is something that is very important, without consideration of which a decision should not be made. If it is not taken into account, the courts could rule that the decision should be set aside, and that is in nobody's interest.

You are right to say that a phrase such as "exceptional circumstances" will be difficult to define in the short term, as it is a new concept. However, if the ministerial policy is that the phrase is to be interpreted strictly to ensure that the planning system is front-loaded so that it works quickly and expeditiously and that it is clear to people what is being talked about, there will quickly be cases—I am sure that there will be—that will give guidance as to what the term means. The discussions that have taken place in the committee and in the Parliament will show that "exceptional circumstances" is to be interpreted strictly to ensure the overall policy of ministers.

Christine Grahame: But you said that the term "material consideration" has already been defined in cases. We already have a technical term in planning; why are we abandoning a term that has an established definition?

Lynda Towers: I do not think that we are. We envisage that there may be exceptional circumstances that may not amount to a material consideration.

Christine Grahame: Indeed, but we could add a subsection (c) to the proposed new section 43B(1) of the Town and Country Planning (Scotland) Act 1997. A new matter could be raised in an appeal (a) if

"the matter could not have been raised before that time";

(b) if

"its not being raised before that time was a consequence of exceptional circumstances";

or (c) if it was a material consideration.

Jim McCulloch: Does not the proposed new section 43B(2)(b) do exactly that? It talks about "any other material consideration".

Christine Grahame: Proposed new section 43B(2) states:

"Nothing in subsection (1) affects any requirement or entitlement to have regard to—

(a) the provisions of the development plan, or

(b) any other material consideration."

You may be right. I will think about that. That was not mentioned by the Faculty of Advocates as curing what it saw as a difficulty. Perhaps the faculty will tell us, by responding in writing or something, whether that satisfies it.

Jackie Baillie (Dumbarton) (Lab): Thank you, convener, for allowing me to ask a question.

Currently, ministers are notified of a planning application by a local authority under certain conditions—for example, if an application is contrary to its development plan. Can you give me any idea of the scale of that? How many applications are we talking about in a year? What percentage result in public local inquiries? What percentage are dealt with by officers, not by ministers? Is that process more resource intensive than what is proposed in the bill, or is it roughly the same?

Mike Culshaw: The financial memorandum provides some information on call-in—I am desperately trying to find it—in paragraph 225, which gives an estimate of

"the likely amount of cases that, once notified, Ministers will actually call in for their own determination"

under the new provisions. It continues:

"Based on Ministerial involvement in previous cases … only about 10% of called in applications are determined by Ministers … 20% of the 10 applications for national developments (i.e. 2) will be called in; 10% of the 520 applications for major developments (i.e. 52) will be called in; 10% of the 310 applications for local developments (i.e. 31) will be called in."

The estimate of the number of applications that ministers will determine, following call-in, is 85.

Jim McCulloch: Presently, there are about 30 call-ins every year, a very large proportion of which go by public local inquiry—I estimate close to 100 per cent. At present, the only applications that tend not to go by the public local inquiry route tend to involve road safety considerations that are relevant to trunk road access for individual houses.

Jackie Baillie: So what is proposed in the bill will be more resource intensive than what happens at present?

Jim McCulloch: Yes.

Jackie Baillie: Thank you.

Mary Scanlon: I turn to the issue of reducing from six months to three months the time limit for lodging an appeal. It is interesting to note that a similar change in England resulted in a 25 per cent increase in the number of appeals. Is that likely to happen in Scotland?

Mike Culshaw: For the purposes of the financial memorandum, we assumed that it would happen, at least over the short term. The circumstances that will apply in Scotland are a bit different from those that apply in England. Clearly, part of the reason we made that estimate is that, if the period of time is reduced from six months to three, applicants will tend to appeal first and negotiate afterwards. Instead of going to their local authority and saying, "If I changed the application in this way, would it be acceptable?", they will lodge an appeal.

Although that might be the reaction in the short term, we should remember that the measure comes as part of a larger package, the aim of which is to try to focus applicants' attention on the early stages of the process. We hope that the number of late decisions to rush to appeal will therefore reduce—we are optimistic about that. Nonetheless, our estimates in the financial memorandum are fairly conservative.

Mary Scanlon: But when a local community agrees to a development in principle, is it not the case that problems can arise when they see the finer detail of it?

Mike Culshaw: Indeed.

Mary Scanlon: I find it slightly concerning that paragraph 234 of the financial memorandum says that the rise in number

"may be because a shorter time limit leads applicants to feel that they should simply submit an appeal, rather than take time to consider alternatives, such as re-submitting an amended application."

Surely, instead of negotiating with the local community and resubmitting an amended application, a developer may just dig their heels in. That is a matter of concern. The measure does not seem to fall in line with the principles of the bill, which are about wider engagement and increased inclusion and consultation.

Mike Culshaw: As I said earlier, under the bill's proposals, those second thoughts on the part of the developer and the engagement with the community ought to happen earlier in the process. The six-month period in which to lodge an appeal only encourages an applicant to wait until they have received the final decision before they consider whether to amend their proposals.

We are saying that applicants should engage with the community early, find out whether there are any problems, resolve them and then come forward with the proposal. If that happens, the shortened time period for appeal should not be of concern. If someone has had a refusal and they feel that it is unjust, they will clearly have to go to appeal, but I do not think that we need to start revising the proposals at that stage.

10:15

Mary Scanlon: I understand that but—excuse me for repeating myself—whereas the community may agree that land should be designated for housing, it may not agree on where the trees go, or on the density, height or type of houses. The proposals could reduce the community's opportunity to input into the finer detail of the development because the developer digs his heels in at a very early stage and does not, as it says in the financial memorandum, resubmit an application because he has listened to the community.

Jim McCulloch: Some developers already engage with communities, but they will be expected to engage with the community that will be the host to the development much more effectively than they have done in the past. That should address your concern to some extent.

The reduction of the appeal period is intended to reduce the level of stress felt in areas where there is a very contentious development proposal and perhaps no acceptance of the principle. The developer—typically it is a housing development—proposes something like an extension to an existing community but the planning authority resists it and refuses planning permission. The community is on all fours with the decision taken, but the developer appeals six months later, when the community thought the case had been decided and that the threat had gone away.

We want to ensure that development proposals are dealt with quickly and effectively. If a plan is refused by the planning authority, the time within which an appeal can be taken should be reduced so that the stress in the community does not extend over a long period.

Mr Home Robertson: To turn that on its head, there might be circumstances when the community wants something to happen but is thwarted. You referred to the mechanism of calling in, which I suppose is a pseudo third-party right of appeal exercised by Scottish Executive officials in the name of the Scottish ministers. Are you at all worried about the possible public perception that Executive planners in Victoria Quay or wherever they live can use that as a device to overrule or frustrate what might appear to be perfectly good decisions that were made after careful consideration of difficult local issues by elected,

accountable local authorities? Are you, in effect, obliged to do the bidding of Scottish Executive planners?

Jim McCulloch: The reporters unit is independent of the Scottish Executive planners. That is why we are in Falkirk for one thing and they are in Victoria Quay.

Christine Grahame: Does being in Falkirk always guarantee independence?

Jim McCulloch: It is not a bad start.

We are separated from the planners functionally and we do not have the kind of relationship with the planning division of the Scottish Executive Development Department that could cause the concern that Mr Home Robertson has expressed. Clearly some have such perceptions, but I assure the committee that the planning division does not tell us what to do.

Mr Home Robertson: Good.

Christine May: I note the costs that are outlined in the financial memorandum and I suspect that much of the money will be used to employ more folk to deal with a faster process and possibly, at least in the initial stages, an increased number of appeals. We are constantly reminded that we should fight the employment of faceless bureaucrats, saving your presence, of course—

Christine Grahame: But they have got faces.

Christine May: There is going to be quite a significant amount of cost for the Executive and the reporters unit, and that is outwith any additional costs to the local authorities, which might or might not be passed on to developers and, ultimately, to consumers. What are the advantages of shortening the timescale set against those increased costs?

Mike Culshaw: The advantages are those that are set out in the white paper. We are talking about a package of greater inclusion, greater community engagement, faster decision making—we hope—through the process as a whole and greater scrutiny of decisions in cases in which that is merited. At least initially, that involves some additional costs.

It is worth pointing out that the unit has been trying to deal with things more efficiently anyway. Over the past five years or so, planning appeals have increased by something like 50 per cent without any increase in our resources. We have dealt with those appeals and have achieved ministers' targets while doing that and, incidentally, moving to Falkirk. We are quite pleased with ourselves for that.

Does that answer the question?

Christine May: Yes, to some extent. Will you explain to me how the costs in the financial memorandum were arrived at and what you envisage them being set against? Those are the costs that the unit will have to bear directly. Are there other recoverable costs?

Mike Culshaw: There were two bases for the costs on which the unit had an input into the financial memorandum. One method was to estimate the number and type of appeals that we think are likely to be made under the new system, compared with what we do now, and use our overall direct running costs as a basis. It is a sort of proportional measure. We have a charging rate that we use per inquiry day so, for instances that we were able to estimate would involve X number of inquiry days, we could add in a cost per day. The figures were arrived at by a combination of those two processes.

Jim McCulloch: There are also costs for the development plan examinations, which are significantly higher than those under the present regime because we expect that a large number of development plan examinations will have to be done relatively quickly after the relevant part of the bill is commenced. Ultimately, the decisions on how the unit is funded and, to some extent, whether it is funded in that way—which is, I suspect, part of your concern—are for ministers. We tell them what we think needs to be done and they respond.

Christine May: Have you made any assessment of the impact that restricting the need to produce structure plans to city areas and, perhaps, the lack of a structure plan to guide local development plans might have?

Jim McCulloch: None.

Mike Culshaw: Not directly. From the unit's point of view, the structure plan examination would be new, because we do not do that at the moment. If a local development plan needs to take on some of the strategic elements of the former structure plans, that might lead to some complication, but we have not done any calculation for that.

The Convener: I remind members that the Finance Committee will investigate thoroughly the financial memorandum and whether it will be able to achieve the objective that the Executive has outlined.

That concludes the committee's questions to the witnesses. Are there any points that they would like to take the opportunity to raise with us?

Jim McCulloch: I do not think so. The policy memorandum clearly explains the bill's objectives and what ministers will charge the unit with seeking to deliver if the bill as introduced is enacted.

The Convener: I thank the witnesses for attending the committee and answering our questions.

The committee will be suspended until 10:30 to allow for a changeover of witnesses and a short comfort break.

10:25

Meeting suspended.

10:30

On resuming—

The Convener: I welcome this morning's second panel, which consists of witnesses from Scottish Environment LINK's planning task force. We have Anne McCall, the convener of the task force; John Mayhew, the deputy convener; and Bill Wright and Stuart Hay, who are members. As with the previous panel, the committee has specific lines of questioning to pursue. We would be grateful if you could answer those questions, but be mindful that we will give you the opportunity to raise any issues that might not have been covered in our questioning.

I will begin. Were you involved in the Scottish Executive's consultation on the Planning etc (Scotland) Bill?

Anne McCall (Scottish Environment LINK): We were involved and the Executive's approach was generally welcome. The Executive packaged individual issues and consulted stakeholders on them, which made the process more manageable for the Executive and for us. However, it is disappointing that, on the four issues that we raised in our written evidence, consultation either did not happen or was unsatisfactory from our perspective. I understand that provisions on national scenic areas will be introduced at stage 2, so clearly there is nothing in the bill on that at present, although a consultation is being carried out. The consultation that was carried out on a third-party right of appeal resulted in an 86 per cent approval rate, but the measure was rejected. On the national planning framework, consultation was carried out in relation to national developments, although the issue was included only at the white paper stage. Finally, while we welcome the sustainable development purpose as far as it goes, it did not appear until the bill was introduced. From our perspective, the scene setting for a bill that is meant to introduce further community involvement was fairly disappointing.

The Convener: I am sure that we will touch on all those issues in our questions.

Mary Scanlon: I will come to the issue of national scenic areas in a moment but, first, what are your views on the proposals in the bill on Scotland's built and natural environments, particularly the proposals that relate to strategic environmental assessment?

Anne McCall: My understanding is that the provisions on strategic environmental assessment are covered in the Environmental Assessment (Scotland) Bill, which has received royal assent and which will be enacted on 19 or 20 February. On the built and cultural heritage, which particular elements are you interested in?

Mary Scanlon: I just wondered if you had any concerns. You raised concerns in relation to the third-party right of appeal and other issues. Are there any provisions in the bill that jump out and cause you concern in relation to our built and natural environments?

John Mayhew (Scottish Environment LINK): I have a comment on the built or historic environment in its widest sense. The issue that I will raise is not included in our written evidence, although it is in our planning manifesto, which has been circulated to the committee. I refer to the way in which we in Scotland treat our historic environment. It is not about provisions in the bill but about additional provisions that we would like. I will explain them, if I may.

Mary Scanlon: If you could explain briefly what you would like to be in the bill, that would be helpful.

John Mayhew: We suggest two measures that we think would help our historic environment. One is the introduction of a duty of care for the historic environment on all public bodies, akin to the duty to further biodiversity that was placed on all public bodies in the Nature Conservation (Scotland) Act 2004.

I should be clear about what we mean by the historic environment. It is most obvious in the tangible built heritage that we see around us, such as ancient monuments, archaeological sites and landscapes, historic buildings, townscapes, parks, gardens and designed landscapes, but it also includes the settings of those features and the patterns of past use in the landscape as well as less tangible aspects such as the historical, artistic, literary and linguistic associations of places and landscapes. We think that the issue is important because those elements, all of which are wrapped up in the historic environment, can contribute fundamentally to our sense of place and, therefore, to our cultural identity and quality of life. That is why we think that the historic environment is important and that such a duty of care should be placed on public bodies.

The other thing that we think would help to promote the historic environment and which we believe the Planning etc (Scotland) Bill could be

used to introduce concerns local authority sites and monuments records, which many local authorities have. They make up a valuable central resource of information on all aspects of the historic environment, such as gardens, designed landscapes, scheduled monuments and listed buildings. That resource is easily accessible to the authority, members of the public and developers and is a useful means of guiding development in those sensitive areas. Local authorities are responsible for overseeing most forms of development in relation to the archaeological resource and the wider historic environment resource. A lot of the impacts on those resources happen through the planning system, which is why we feel that the Planning etc (Scotland) Bill would provide a suitable opportunity to produce the requirements that I have mentioned, such as the general duty of care and the obligation to have a statutory sites and monuments record.

Mary Scanlon: Do we not already have a duty of care with hysterical Scotland—I mean Historic Scotland—

Mr Home Robertson: You got it right the first time.

Mary Scanlon: Oh, dear—I am getting good at the Freudian slips.

I was thinking of Historic Scotland and ancient monuments. An example of a situation in which too much bureaucracy in the planning system can lead to poor development or a lack of development is Castle Tioram, the seat of the clan MacDonald, which is being allowed to fall into the sea because an individual is not being allowed to bring it back to life and use it as a residence. Perhaps a duty of care can be a bad thing as well a good thing, because it can lead to people being too bureaucratic, as Historic Scotland sometimes is.

John Mayhew: Historic Scotland is part of the Executive and is responsible for looking after all aspects of the historic environment. However, that duty does not extend to local authorities and other public bodies, such as Scottish Water, the Scottish Environment Protection Agency and so on. That is the extension that we are proposing.

I decline the invitation to comment on Castle Tioram in particular as I know that that has been a rather contentious issue. I suspect that it would have been a contentious issue whatever the legislation and regardless of whether the duty of care existed or not.

The Convener: I am sure that Historic Scotland will have noted with interest Mary Scanlon's view of the organisation.

Patrick Harvie: Scottish Environment LINK's written submission says:

"We appreciate the value of providing an enhanced role and status for the National Planning Framework".

Why do you think that that is a positive approach in general? In particular, do you think that the idea that it should include specific proposals for development is a positive one?

Anne McCall: We engage with a huge range of interests relating to built, cultural and natural heritage. One of the hot topics of the moment is renewables. There are spatial implications of having a renewables policy that encourages the building of renewables to tackle climate change. In order to understand how renewables will be accommodated, how they will be connected to the grid, where they will be put, how the electricity will get to where people are going to use it and so on, there is clearly a need to understand the spatial implications of certain types of policy. That applies across the board—it applies to health, infrastructure and to the other things that make Scotland plc work. The Executive has made a convincing case for having a document that takes the range of Executive policies and expresses them spatially so that everyone can understand the implications and demands of national policy.

Our concern has arisen as a result of two aspects. One is the fairly late-in-the-day decision to include national development in the national planning framework as specific development, which, essentially, will then be given permission in principle in terms of the need for that development. The people of Scotland will no longer be able to engage at a local level in the debate about whether a proposal is needed.

The second element is the issue of how consultation about the national planning framework will be carried out. I was fairly extensively involved in the first national planning framework, which had its drawbacks. There are proposals to try to address that but, given the enhanced status and the statutory requirement to produce it, we have to expect something for the national planning framework that is akin to the expectations that are being placed on local authorities in relation to strategic development plans and local plans. I see no logic in treating the Executive's national plan substantially differently and more leniently.

Patrick Harvie: How should public involvement in the national planning framework be achieved? What is the best way of making that a meaningful process?

Anne McCall: The Executive has given a welcome indication that it is inclined to hold thematic and regional seminars. That is not in the bill—an awful lot is not in the bill and a great deal will come in secondary legislation, which has created problems for us and for others who have been giving evidence to the committee.

The core issue from our perspective is that there will be no opportunity for the national planning framework to be examined publicly in the way that the Greater London Authority spatial strategy and the Northern Ireland development strategy were examined, or the regional development agencies' strategies and regional spatial strategies throughout England are examined. Those examinations are called examinations in public and they last for only five to seven weeks. They offer an opportunity for a trained professional who is appointed by ministers, such as someone from the inquiry reporters unit or an academic, clearly and robustly to examine everything that is in the national planning framework and to present—in this case, to Parliament—the evidence that they have gathered. Scottish ministers will find themselves in much the same situation when they consider the strategic development plans, following an examination in public. We are really just asking for parity.

Patrick Harvie: Would you say that it should be for ministers to appoint someone to carry that process through, rather than for that to be part of Parliament's process?

Anne McCall: It could be either.

Patrick Harvie: On parliamentary scrutiny, there is an issue about whether the 40-day period is sufficient. We could probably take it as read from your written evidence that you would share the view that it is not sufficient. However, assuming that that is not the question and assuming that the committee will haggle with the minister later about the length of the period, how should that process work? What level of scrutiny should the Parliament apply to the national framework?

Anne McCall: The critical question will be how much information Parliament has to start with, before it starts scrutinising the document. If Parliament starts with a national planning framework that has gone through some level of consultation and is then delivered as a completed document, it will essentially be starting from scratch. If it starts having had an inquiry, teased out the key issues, had the evidence explained and received recommendations from a professional, it will be substantially further on in the process of scrutinising the document.

The committee system offers an opportunity for a reasonably robust testing of what is in particular documents. The evidence that the committee has received so far from the Executive suggests that the 40-day period had been taken from the affirmative resolution procedure for statutory instruments. Simply to see the national framework as a statutory instrument, when in fact it is a policy document that establishes what will happen in Scotland over the next 20 years, seems to indicate a very modest role for Parliament. We would like the democratically elected representatives of the Scottish people to have an opportunity to scrutinise closely a document that will establish what will happen in our country for the next 20 years.

10:45

Patrick Harvie: I agree. Do you also have a concern about the process after the Parliament has dealt with and taken a view on the national planning framework—whether or not the Parliament ends up holding a debate and a formal vote on it and whether or not a committee produces a report on it? The Executive has a duty to "have regard to" that feedback from the Parliament. It is not Parliament's decision; it is ultimately for ministers to decide, while having a duty to give some weight to the Parliament's view. What does that mean to you?

Anne McCall: There are concerns that, following a debate in Parliament or some level of parliamentary scrutiny, although the Executive will note the recommendations that are made to it, it might largely ignore them. From the point of view of organisations that engage regularly with the public, the questions that we will most often be asked are: what the Parliament was doing; why ministers did not listen to the Parliament; what the point of the scrutiny exercise was; and why the Executive engaged in it if no changes were to be undertaken. The core of the issue, which we have repeated throughout our evidence, is that although the Executive has recognised that the planning system does not engender trust among the people of Scotland, the process that is being proposed with the national planning framework does nothing to support the creation of trust in the new system.

Patrick Harvie: I am sure that ministers would say that they will have regard to the results of their own consultation processes, but the figure of 86 per cent, which you mentioned earlier, suggests that that duty on the Executive is not sufficient.

I turn to the issue of sustainable development. The duty on planning authorities to carry out their functions in keeping with sustainable development applies only to the strategic development plans and the local development plans. Why is that not sufficient? What practical difference would it make if that duty also applied to the national planning framework?

Anne McCall: I am conscious that I am hogging the answers.

Patrick Harvie: Any member of the panel is welcome to comment.

Stuart Hay (Scottish Environment LINK): The most important thing is consistency across all the different plans. It is expected that local authorities

will ensure that their plans conform to the sustainability duty as standard. There is no reason why the most fundamental plan in Scotland, which will deliver the Executive's sustainability strategy, should not have that duty applied to it. That is a point of consistency. The lower tiers will have to conform to the national planning framework, and it is important that they all start from the same point.

Anne McCall: We welcome the fact that the Executive has included a provision in the bill stating that local authorities

"must exercise the function with the objective of contributing to sustainable development."

That is hugely welcome, and it conforms to what is happening in the rest of the United Kingdom. It means that Scotland will not lag behind on sustainable development.

We have an interesting and fairly unique opportunity here to take delivery of the sustainable development strategy, which was published just before Christmas and which clearly promoted a move from strategy to implementation. The bill is all about implementing change. If there is going to be a duty to contribute to sustainable development only through local plans, I would challenge members to find any difference between what is happening now and what will happen in 10 years' time. Almost every local authority in Scotland has some reference to sustainable development in its local plan.

The core challenge will be to make the shift from having good policy intentions under a development plan to delivery on the ground. If each individual decision under the development management system does not deliver developments that are predominantly sustainable in nature, the net outcome will be that a majority of developments will not be sustainable. There is a duty on the Greater London Authority in relation to sustainable development, and a number of London boroughs have come up with a sustainability checklist, which can be used against individual applications. That has been fairly effective, although it has been a little bit piecemeal and inconsistent.

I suggest that, under the bill, we could extend the sustainable development purpose beyond development plans to the national planning framework, and specifically to development management, such that, in accordance with guidance published by the Executive, every local authority in Scotland would apply the same process to sustainable development when they consider individual applications. The net outcome of that is going to have to be delivery of the sustainable development strategy.

The Convener: I will allow John Home Robertson to join the discussion at this point, as this is an area in which he has a particular interest.

Patrick Harvie: I understand. I would just like clarification on one last point.

The Convener: No, Mr Harvie. If we have time, I will allow you back in.

Mr Home Robertson: Thank you, convener. My question is also on the theme of sustainability. The written submission states:

"It is unclear how the overall purpose of development plans can be to contribute to sustainable development if individual decisions taken in accordance with it cannot be shown to be sustainable".

I would like to explore that. There are all sorts of things that we all need and depend on in our day-to-day lives that cannot be done 100 per cent sustainably. Is Scottish Environment LINK seriously suggesting that nothing of that nature should ever be allowed to be constructed or developed?

Stuart Hay: The fundamental purpose of the planning system is to try to achieve a balance in terms of sustainable development. It is about long-term decision making and balancing social, economic and environmental considerations. At the moment, there is a lack of emphasis on the environmental considerations. The duty would change the culture by simply reminding the people who make the decisions that that is what the system is about. It is not as fundamental as it looks, but it is very important.

Anne McCall: I will give you a practical example of how it has worked in London. In identifying whether developments contribute to the purpose of sustainable development, a number of London boroughs have developed checklists that ask, for example, whether a development is energy efficient and how it deals with water. A lot of the standards are established by our building regulations. It is about pulling together the decision-making process to determine whether the overall percentage of a development contributes to sustainability. If it is more than 50 per cent, it is considered generally to be contributing to sustainable development.

We are not asking for an unrealistic situation in which everything is 100 per cent sustainable. Although that would be lovely, it is not going to happen. We are talking about making a nice-to-do policy into a practical policy that something will happen in the majority of cases. The reference in the bill is to

"the objective of contributing to sustainable development."

The bill then says that that will be achieved in accordance with Executive guidance. There seems to be no logical reason why that cannot be applied to the development management process. The guidance could take a checklist approach whereby, if more than 50 per cent of a

development contributed to sustainability, that would mean that, in general, the development was more sustainable than not.

Mr Home Robertson: That is something that we can explore. I am glad that you take the point that, although it might be nice if we could all return to primitive bliss, we have cities, power stations and roads that are inherently not 100 per cent sustainable. You accept that we are looking for a balance and that it should be an objective for us, over the piece, to build up sustainability rather than to look for absolute sustainability in every individual case.

Anne McCall: Absolutely.

Mr Home Robertson: That was the bad cop question; there is a good cop question coming, which is also on the theme of sustainability.

It has been put to us by various people that a working definition of sustainability is difficult to achieve. Specifically, the Law Society has described sustainability as "a nebulous concept". Do you think that a definition of sustainable development could be worked up from existing policies on sustainable development, which could be a peg on which to hang all the provisions in the bill?

Anne McCall: That is a difficult question. Perhaps it would be easiest to look at precedent and where the concept of sustainability has been used effectively before. The Environment Act 1995 provides for statutory guidance from the Executive for SEPA, in particular. SEPA is required to abide by that statutory guidance. We could work up an effective definition as long as it was supplemented by guidance and could be flexible, so that we could continue to push the bar up and not go to the lowest common denominator.

The Convener: Mr Harvie, I will let you back in with a short question.

Patrick Harvie: There is so much to choose from in what has been said. Anne McCall talked about applying the same checklist process to developments. Were you talking about having the same process within a local authority or about a single sustainable development checklist being used throughout Scotland?

Anne McCall: Uniformity across all the local authorities would provide the best level playing field for local authorities and for the development industry.

Patrick Harvie: I shall reflect on the likelihood of some wise politician one day thinking that it would be a nightmare to return to this primitive society.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Does the panel believe that the development proposals in the bill will help to achieve the objective of making the planning system fit for purpose?

Stuart Hay: There are various aspects to that question. We welcome quite a lot of the bill, such as how it tidies things up and addresses developer appeal issues, for example. We have more concerns about the effectiveness of the provisions on public consultation and involvement. A lot of what is proposed happens already, and some of that does not come from legislation. We have various experiences of such things as pre-determination hearings and pre-application consultations. At the moment, good developers are doing those things. The bill is trying to legislate for the rest, but we are not sure whether that will actually change the culture in the way that is necessary or whether it will change the balance in the system between developers, planners and the public.

Cathie Craigie: You acknowledge the fact that the bill aims to encourage more involvement. Do you believe that the bill will be able to encourage people to engage with the system?

Stuart Hay: The best parts of the proposals are the provisions on strengthening the plan-led system and on pinning down the consultation that comes with that to ensure that it is done properly. The planning system has obviously struggled with that for years now, so it would be a fundamental jump forward if the bill could crack it. However, there is no guarantee that that will happen.

We worry that there is no backstop for communities. If they go through the process and see that their views are ignored and that decisions are made that are not compliant with the development plan that they helped to draft, what can they do? We want a third-party right of appeal in a limited number of circumstances, such as in highly controversial cases, so that communities can say, "We want this decision looked at again." In that way, genuine concerns can be examined in an inquiry and the issues can be teased out.

Cathie Craigie: One of my colleagues will go on to talk about that later, but I would like to concentrate at the moment on development plans. Do you believe that the bill will improve the transparency of the system and encourage engagement with it?

Anne McCall: We have welcomed a large number of the proposals in the bill. We understand that the purpose of modifying the system is to make it more efficient and to encourage more community involvement. Having the development plan at the core of the planning system is something that we have always welcomed, and individual organisations and Scottish Environment LINK have engaged with the system over a long period of time. We appreciate and value the

certainty and predictability that come with having a development plan that is reviewed, revised and up to date.

We query the overall balance of measures and whether the bill can achieve what it sets out to achieve. We perceive something of a loss of rights for individuals, who will no longer be able to require that a public inquiry be held into local plans, the inquiry procedure being determined instead by the inquiry reporters unit. There will no longer be consultative draft plans. There will be a main issues report, but consultative draft plans—with the opportunity for people to object and to engage in detail with those plans—are being removed. That is driven by the need for greater efficiency and faster production of plans. The opportunity to object to national developments on the ground of need will clearly not exist.

The elements that focus on greater public involvement in consultation and pre-application hearings are all to be determined in secondary legislation—that is set out in the policy memorandum. However, at this stage, the bill does not define who will be consulted, the way in which they will be consulted and the categories of development.

The result of all of that is that we are left with a piece of primary legislation that is clearly being driven by an Executive agenda for more public engagement. If I were a lawyer and I had to sit down in 20 years' time to work out what the act actually says, I would find nothing that absolutely enshrines the rights of the individual and yet that was very much the tone of the white paper. We are a little bit disappointed at the balance that has been struck between the white paper and the bill.

11:00

Cathie Craigie: Do you agree that the bill needs strengthening in the part where the Executive talks about consulting agencies and organisations? I am sorry, but I am not sure of the exact wording. Instead of leaving the wording open, should not the bill describe the communities and so forth that the Executive will consult?

Anne McCall: Fairly well-defined concepts of the public have been established in the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. It would be reassuring to see specific references being made to the public in the bill. At the moment, they do not exist.

Stuart Hay: Let us take the national planning framework as an example. The wording says:

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

It does not say that ministers are to consult the public; they could speak to SEPA, Scottish Natural Heritage or Scottish Water, for example. The section defines neither the public nor the way in which ministers should conduct their engagement with them. We would like to see the bill give a little bit more reassurance on those issues. That is just one example; we could have given others.

Cathie Craigie: I am grateful to you for reading that out; it was the part of the bill that was on my mind. I think that the committee will want to address the issue in our session with the minister.

Anne McCall said that the bill will result in a loss of rights; people will lose the right to go to appeal in the public local inquiry process. Do people really want the right to do that? Do they really want to become involved in inquiries that can become such confrontational and adversarial events? Do they really want to be involved in shaping the local plan?

Anne McCall: I am not sure that I can speak for the people.

Cathie Craigie: Make a try.

Anne McCall: I think that people would like an opportunity to choose the procedure that suits them best rather than have it chosen for them by a planning professional who does not necessarily know their skills, areas of strength or the issues that they want to raise. I appreciate that the Executive is seeking to create capacity in the inquiry reporters unit, which is under a great deal of pressure.

However, one of the few rights that the individual has in terms of having their voice heard is the right to have an inquiry into a local plan, should they wish that to happen. Under the bill, people no longer have that right. Although some individuals might not wish to exercise that right, its existence gives people a deal of reassurance that they have more power, control and involvement in a fairly complex system.

Cathie Craigie: I thank you for the response, although I am not sure that I accept that people want to be that involved. The concerns that my constituents tend to bring to me are more about whether they have the knowledge and resources to be able to take on a public inquiry. They see that route as not entirely a satisfactory way to go. How do we get the knowledge out to a few activists on a small community council, for example?

Anne McCall: There are two issues.

First, as the member rightly says, a great number of communities do not wish to go to a public inquiry; they see inquiries as lengthy, expensive and adversarial. From personal experience, I can say that public inquiries are not

a great deal of fun. If people were to be given the opportunity to select the method that suited them best, they might choose hearings or a greater use of mediation. With regard to getting people engaged in the process, offering them the opportunity to select the mechanism with which they feel most comfortable is far more effective than someone from the Scottish Executive inquiry reporters unit telling them the method that they will find most acceptable.

Secondly, the member raised the issue of community resources and asked about the ways in which to skill people to engage in the planning system. The policy memorandum touches on fees and resources and the need to train and engage people more with the planning system. That is a huge issue. From our organisation's perspective, some of the most frustrating days at work are when people phone up and say, "We need your help," and we cannot give it.

Bill Wright (Scottish Environment LINK): I have considerable experience of this matter through the Association for the Protection of Rural Scotland. We are phoned regularly by members of the public who are utterly frustrated in dealing with planning applications or development plans. If the proposed system for development plans is to be effective, the public and communities need the appropriate capacity and resources. There are very varied needs, which depend on where someone is in Scotland. The Executive has already indicated that it will raise the level of resources for Planning Aid for Scotland. However, I suggest that those resources are inadequate for a development plan-focused system. In any area of civic life, the public need to be able to understand what they are dealing with.

Cathie Craigie: I accept that, and that is why it is important to have a system that makes it clear to people exactly where they can go. Do you agree with involving people at an early stage in the planning process so that they see that the plan for their community will touch them every day, and that we should aim our resources at encouraging people to be involved?

Bill Wright: I do not think that LINK has any problem with greater engagement at an earlier stage; that is a welcome step. However, we have to remember that the situation in Scotland is very varied and that there are different circumstances throughout the country. For example, in rural areas it is particularly difficult to conduct that type of engagement. That is why we need the safety net of a third-party right of appeal for individuals who have not been able to participate at an earlier stage in the process.

Anne McCall: The core issue for us has always been getting people engaged with the planning system so that the proposals are what they expect and so that—while they might not necessarily greet the proposals with cries of joy—they understand how the decision was reached because they played a part in shaping the proposals.

We are very keen for there to be more pre-application consultation, but we have a great deal of scepticism about the efficacy of pre-determination hearings. We have considerable experience of them, but we cannot quite work out what they are for. We propose that there should be a system that not only is wholly focused on the development plan and has great emphasis on front-loading, as the Executive calls it, but provides a safety net at the end so that the elements that fall through the cracks can be caught. If, having engaged with the development plan process, a pre-application discussion and a pre-determination hearing, people were given a decision that was contrary to the development plan, such a safety net would mean that they were not left thinking that they had wasted 10 years of their life engaging with a process because they got a decision that went contrary to the way they thought it would go, and there would be nothing they could do about it except employ a Queen's counsel and go to the Court of Session.

Cathie Craigie: But you are talking about the past. With the new legislation, people will not waste 10 years of their lives—

Anne McCall: Five years, then.

Cathie Craigie: We will have a much quicker process, which will be updated every two years. I would appreciate hearing opinions based on the proposed legislation. Committee members are trying to learn from their experiences. Will the proposed legislation improve the system?

Anne McCall: Yes; it will go some way towards making the system better, but there is a point at the end of the process that is not being addressed. Those who have not been served well by the system will have nowhere to go, but the developers will. That basic equity issue continues to be a huge problem for our organisation and it has not been addressed by the bill.

The bill contains many good proposals that should make the system slightly more efficient. If the secondary legislation does what the policy memorandum says it will do, several measures in it might make the system more inclusive. However, no final backstop such as that for developers will be provided for third parties who feel that the system has failed them.

John Mayhew: I will add a quick comment. Our experience is that it is very difficult to get people to engage with the process of plan preparation, however much we all—you, the Executive and us—would like to do that. We welcome many of

the mechanisms in the bill to encourage such engagement, but it will still be difficult to make people engage with something that they feel is relatively abstract and does not affect them personally.

People engage when something is proposed to happen next door to where they stay; that is the point at which we all receive frustrating phone calls, e-mails and letters that say, "This dreadful development is proposed for next door to me. Please will you help me?" When we check and find that such development is in the local plan, we do not have the heart to tell those people that they should have engaged with the local plan five, six or seven years ago.

The bill proposes that people will be notified if the local development plan is to contain a proposal for land that they neighbour, which is another provision that we welcome. However, it will continue to be difficult to persuade people to engage at that abstract point in the process. Inevitably, they will mostly continue to want to engage further down the line when a proposal directly affects them.

Stuart Hay: Another issue is how developers and planners treat the public. If the public had more rights, their views would be taken more seriously. Some communities that engage with the process are given quite short shrift and the process is developer and council led. We are looking for something to shift that position so that everybody has a share in ownership of the plan.

The Convener: I call Patrick Harvie and remind him that we will return to the third-party right of appeal issues, so his question must relate to development plans.

Patrick Harvie: My question is about the balance between consultation and rights in general rather than one particular right. We do not want people to have rights to exercise simply for the sake of doing so; we want to help to change the culture of the system and to give professionals and other people who run consultations incentives to make them meaningful rather than box-ticking exercises. In the absence of the general rights that LINK calls for and advocates, what other incentives will professionals have in the proposed system to make consultation exercises meaningful?

Anne McCall: I do not want to sound jaded, but as a planner who previously worked for a local authority, I know that public engagement has been on the cards since the mid-1960s. When the Executive announced that it wanted more public engagement as a result of the planning bill, there was some eye-rolling and a feeling of "Oh God, here we go again," among planning professionals. I appreciate that, because turning out on a dark evening in a windy community hall to try to engage the public in a development plan is soul destroying, especially when nobody turns up.

Patrick Harvie: Hustings are much the same.

Anne McCall: I am sure that you as MSPs are more than aware that engaging the public in the political process is not always a piece of cake. To ensure that the public are engaged and that their voice is taken seriously, local authorities are undertaking a range of fairly interesting initiatives.

The key point is that the public should feel that when they engage, they make a difference and are taken seriously. If they feel that the process is one that the local authority or developer is obliged to follow as a matter of law and that, should the local authority or developer ignore the public's views, it will face no consequences, people will not engage with the process. They need to feel that it is real.

11:15

Bill Wright: A series of local community facilitators have been involved in the production of the local plan for the Cairngorms national park authority. Resources have been needed to train them to conduct the various local community events.

However, if after people are taken through that process and are led to believe that they have some ownership over the local development plan for the national park authority, a development application is submitted that goes against the plan, the legislation will have failed. We must be realistic. If we find that, having invested at the front end of the system, we are not following through with the safety net of third-party right of appeal, the legislation will simply breed the same kind of cynicism that we have with the current planning system.

Stuart Hay: The introduction of pre-determination hearings could increase public cynicism, because after looking at all the reports and consultations that have been carried out I cannot find any evidence that the public want these hearings or that they will be effective. As proposed, they are simply an inadequate substitute for TPRA and come at the wrong point in the process. They will help only a very small number of the people with whom we need to engage in the planning system.

Christine May: This bit of the bill is probably the most interesting for communities and, indeed, for the rest of us. Although I acknowledge some people's view that TPRA will solve every problem, I want to come back to what might be done when development plans are drawn up and how the process might be managed.

If we accept that—since we live in a fairly instant society—development planning is a longer-term process than most folk are accustomed to; that in order to allow land acquisition and some sort of pre-planning process, the uses to which the land will be put must be made fairly clear; that everybody cannot be a winner and that, regardless of the outcome, some people will remain dissatisfied because their point of view has not been taken into account, how do you view the proposal to introduce a hierarchy of national, major and local developments? For example, do you feel that, in such a hierarchy, it is appropriate for the Executive to decide on national strategic developments, and then for major and more detailed local developments to be decided on at a more local level? What safeguards should be built in at that stage?

Stuart Hay: We have nothing against the proposed hierarchical system, which we feel takes a sensible approach to efficiency. However, we still have a number of concerns. For example, because everything will be set out in secondary legislation, we are not clear about how the system will work. We are also concerned about the amount of scrutiny that national developments will receive in the process of approving the national planning framework. If we can have a full inquiry to tease out all the issues and if people are able to lodge objections or see that their concerns are being addressed, that will be fine and good. At the moment, we are seriously concerned that those matters will be decided without that kind of formal process.

Christine May: I believe that you have already mentioned this, but do you want some sort of consultation on or public engagement in national strategic developments?

Stuart Hay: Yes.

Anne McCall: As for the other aspects of the hierarchy, I feel that treating an application for a house extension in the same way as an application for an enormous housing development is illogical. It is entirely laudable to focus resources in different ways on different types of development.

With regard to the impact on our natural and cultural heritage, we feel that there is scope within the general permitted development order, which is under review, to permit more developments that would benefit the environment and perhaps to revisit some developments that, up to now, have had permitted development rights that have caused some concern. As a result, revisiting the order is a welcome move.

Those who have given evidence to the committee have debated the definitions of major developments and local developments. There is one thing that I would like to add to that debate from an environmental point of view. The only clear comparison that can be made in that context relates to when people are trying to identify whether an environmental impact assessment should be required. In such situations, the Executive has chosen the route of identifying thresholds and then applying criteria.

The problem with saying that every application that involves more than 300 houses is a major application is that, from experience, it will incline some developers to go for either 298 houses or 301 houses, depending on which process best meets their needs—Roy Martin also mentioned that matter. The procedure that is applied as a result of the environmental impact regulations, which involves thresholds combined with criteria that help people to determine whether a development is major or local, could be usefully considered.

A level of consistency and predictability would be welcomed by organisations that operate throughout Scotland. A development that is considered to be a major development in the central belt should also be considered to be a major development in the Highlands. Such consistency and predictability would make life considerably easier for those who are trying to engage with the system.

Christine May: Do you not accept that the scale of cities means that the scale of developments in them is not directly comparable with the scale of developments in more remote areas?

Anne McCall: Having absolute limits would make the system inflexible and prone to abuse. A combination of thresholds and criteria would allow flexibility and predictability.

Christine May: I think that Mr Mayhew said that people do not engage early enough in the process and that folk frequently need to be told that they should have done something at the plan development stage and that it is too late for them to propose something. I think that all of us have experience of such situations. Like Anne McCall, I have undergone the misery of sitting in a cold hall trying to engage the community's interest in a development plan. Two men and a dog will be present—one of the men will be drunk and the other will be the janitor. The process is soul destroying. Nevertheless, do you agree that the community has the most opportunities to influence matters at that stage and that we should encourage people to participate? I have heard quite a lot of criticisms from you of the bill's failings, but I have not heard many suggestions about what should happen at that stage of the process. I would like to hear about what the bill should include in that respect.

Stuart Hay: It is difficult to legislate in such areas. Issues such as culture, how planners go about things, who carries out the consultation and how they should engage with stakeholders are involved. The traditional approach involves people being invited to an exhibition in the town hall on a dark evening and being asked what they think, but the process must be much more led and linked into the community planning process. How the process would work is not particularly clear in the bill. There are fundamental questions that we are not in a position to answer.

Anne McCall: We are not giving the committee a list of things that must be done because the Executive has come up with a list of interesting suggestions, such as e-planning, giving more resources to Planning Aid for Scotland and having planning advice notes. The bill and the policy memorandum contain many great suggestions about how people can be more effectively engaged at the beginning of the process, which we welcome. If those suggestions work, that will be even better.

The problem for us is that we fundamentally believe that the incentive for people to engage with the system depends on their feeling that their engagement is meaningful, but their engagement will never be meaningful unless they feel that they have the same rights as the developers who are engaging in the system with them. We are talking about a particular proposal that could have a significant impact on the effectiveness of a range of other Executive proposals. We think that pre-determination hearings might be counterproductive, but otherwise the proposals are welcome and we are not challenging them. Indeed, we have discussed with Planning Aid for Scotland how we can more effectively engage with communities. We are not criticising the suite of measures that are on offer, but we think that the addition of a fairly simple proposal would make all the measures work better.

Christine May: Okay, but you agree that at some stage there has to be a final determination, and it must be agreed that that will not always satisfy everybody?

Anne McCall: Absolutely. Planning is about making difficult decisions.

Christine May: If we are to shorten the process and give everyone greater certainty, the stage when the final determination is made must come relatively soon.

Anne McCall: It has to be done equitably.

Stuart Hay: The more issues that are dealt with at the local plan stage, the better. The more detail there is, the more assurances communities will have. We have no problem with that. A third-party right of appeal will only be as strong as the plan that people have engaged with. That will be the community's strongest piece of evidence when challenging any development. Whatever happens, the plan has to be at the centre of the process.

Christine May: Perhaps we should have discussed the third-party right of appeal at the beginning, convener. Then we could have gone into the other discussion.

The Convener: Indeed. I am sure that we will return to the issue. I hope that we will be able to touch on the subject of the third-party right of appeal in relation to applications.

Do you believe that it is right for local authorities to have responsibility for neighbour notifications?

Anne McCall: That is not an issue that we at LINK have discussed at length. To make things a little more certain procedurally, however, we feel that it is a useful initiative. One of the interesting elements of the bill is that the proposal for neighbour notification in relation to development plans under particular policies that affect individuals living near the area concerned is to be implemented through secondary legislation rather than in the proposed primary legislation. That is a little disappointing.

The Convener: Do you believe that any benefits will arise from giving local authorities that responsibility? If so, what might they be?

Stuart Hay: The main thing is the issue of trust—and I am referring to the local authority rather than the developer—and ensuring that everybody who needs to know about a development is notified about it. For whatever reason, there has been mistrust in the past. People often say that they did not get the information at the time when they needed it in order to object. I think that the neighbour notification proposal addresses those concerns.

Mary Scanlon: I would like to talk about pre-application consultation, although you have already strayed into that subject in response to Cathie Craigie and others and I would not wish you to repeat anything that you have said. Ms McCall said that it is not possible to work out what pre-application consultations are there to do. The policy memorandum says that their

"policy objective is to strengthen public participation in the planning system and, in particular, to allow interested parties to express their views on a development proposal before an application is submitted to the planning authority."

I am sitting here in quite a cheerful mood, and I cannot understand why you said, Mr Hay, that pre-application consultations could increase cynicism. People are open to consultation, and we all want further engagement, from the planning directors to the developers and throughout the system.

Everyone to whom we have spoken realises that there must be a culture change. I want to consider what is in the bill positively. Although I am from an Opposition party, I want the bill to work. I wonder why you are so cynical—that is what you said—about something that has the potential to engage the public at such an early stage in the process.

Stuart Hay: Pre-application consultations are a different matter. It is good that developers help shape developments around community concerns.

Basically, pre-determination hearings provide an opportunity for somebody to stand in front of a committee and let off steam. Essentially, that is all that they can do. Just talking from experience, I know that, in one example, 600 objectors were given 15 minutes to speak about their concerns, and that was without any duplication. It was a bit of a lottery when it came to who got to speak, and the developer then got to respond. That did not really add anything to the process. The hearings will suit only certain people who like that sort of arena, where they can stand up and talk to their councillors. We do not really see how pre-determination hearings add any value, and we do not see where the demand for them is.

11:30

Mary Scanlon: I am sorry, and I know that we have a lot of questions to put and that you have spoken about this a lot already, so I do not want to cause undue delay, but I feel that what you are saying could discourage people from coming forward, and I find that a matter of concern.

Many people out there feel intimidated by the process. I find it worrying that you could make it even more frightening. From what I understand, people have the opportunity to express their views on a development proposal before an application is submitted to a planning authority—not to stand up in front of 80 Highland councillors and put forward their viewpoint. I was looking for slightly more positive views on the bill.

Anne McCall: I offer clarification because I think that we might be talking at cross purposes. We are wholly enthusiastic about pre-application consultation and engage with it regularly. A number of local authorities and local developers actively pursue it and do it well—issues are resolved and objections are dropped. In my organisation, we comment on about 400 applications a year and a significant number of our concerns are addressed by pre-application consultation with developers. It is a useful part of the process that we would love to see developed and formalised.

Our concerns focus very much on the pre-determination hearings, which are not codified and for which there is no standard procedure. Our experience of them has been overwhelmingly negative: decisions are taken quickly, people are given very limited opportunities to speak and they happen at a point in the process where views have already become polarised.

If the purpose of people having more opportunity to be involved with a particular development proposal and with their local authority is to try to seek resolution, the hearings process does not achieve that. It is not a public inquiry and the conveners rarely receive training on how to manage a hearing. The outcome of such hearings tends to be the consolidation of objections to something should the decision go against what the majority of objectors wanted.

I suggest that rather than focus on hearings that come quite late in the day at a point when views are polarised, it would be more productive to consider more carefully the value of mediation, where individual concerns can be addressed earlier in the process, after pre-application consultations. From my experience, hearings tend to be vocal and heated and do not add much to the process.

Mary Scanlon: I have a final question to which I probably already know the answer. Will the pre-determination hearings increase public participation and inclusion in the planning process? A single-word answer will do.

Anne McCall: Probably not.

Stuart Hay: Not based on our experience of them to date.

Christine May: I turn to the proposals for formal schemes of delegation and how those will be dealt with. Will developers and communities benefit from the introduction of a clear formal scheme of delegation?

Anne McCall: The system of delegation has clear advantages in freeing up local authority capacity to deal with more controversial or difficult cases. There is currently quite a disparity between the local authorities that delegate a great deal to officials and those that delegate virtually nothing. Having a scheme of delegation that sets out the rationale behind it and states how much will be delegated and when, would be welcome from the point of view of openness, transparency and understanding how the system will work.

Christine May: Do you think that it will speed up the process?

Anne McCall: Hopefully, yes.

Christine May: Any comments on the right to review?

Anne McCall: Having looked at the evidence given by the Law Society, I would rather defer to

legal expertise on whether that right is ECHR compliant, but it seems to be a fairly lumpy issue.

Ms Sandra White (Glasgow) (SNP): I apologise for being late. I am a member of the Public Petitions Committee as well as a substitute member of this committee. I will be attending Communities Committee meetings during its consideration of the Planning etc (Scotland) Bill. Thank you, convener, for allocating me some time.

What are the witnesses' views on the proposals to give Scottish ministers the power to decide the most appropriate method of deciding appeals?

Anne McCall: We have touched on that. The fact that local objectors will no longer be able to require a public inquiry on a local development plan is a concern, because local people should be allowed to identify the most appropriate mechanism that they feel they can engage with to scrutinise a development plan. The idea that a suite of opportunities that includes hearings, round-table discussions and inquiries will be available to people is welcome, but enabling individuals to pick what suits them best would be most likely to result in public engagement.

Ms White: Would such a system impinge on people's ECHR rights?

Anne McCall: I am aware of the evidence that the committee has heard from the Law Society of Scotland and the Scottish Executive on ECHR compliance. We in LINK discussed the ECHR. We are not legal experts, but concerns were expressed about the bill's compliance with access to justice provisions and individual rights in the ECHR and the Aarhus convention.

Ms White: So you regard removing the ability to require an inquiry as an infringement of people's rights.

Anne McCall: It seems to be a reduction in the rights that people enjoy.

Ms White: What is your opinion on limiting the introduction of new material by developers at a planning appeal? How will that affect the appeal system's operation?

Anne McCall: It may surprise the committee to hear that I understand the Executive's logic in trying to limit and focus an appeal. However, I was involved with the Lingerbay superquarry inquiry, which was part of a process that lasted for 12 years. Had that been limited to the information that was available at the beginning of the process, decision making at the end would have been tricky. The provisions in the bill to allow additional material that relates to policy changes or material changes are logical and reflect reality. If policy changes, decisions should reflect that.

Ms White: That is an interesting point from you.

Will changing from a system of outline planning permission to one of planning permission in principle allow for fuller public involvement?

Stuart Hay: We are not clear on how that change will affect the situation or on how it will marry with pre-application consultation. We are unsure about how that will work.

Anne McCall: It is probably worth pointing out that the environmental impact of outline planning applications is notoriously difficult to evaluate. I understand that permission in principle is a modified version of outline planning permission and represents an attempt to clarify the process. Engaging people in pre-application consultation is difficult when all that we are talking about is a permission in principle with no detail. That makes any discussions harder.

Ms White: Consultation sounds good. As we have gone through the bill, we seem to have heard lots about pre-consultation, consultation and consultation afterwards but, as you said, no third-party right of appeal will exist at the end, even for someone who has been consulted.

I had to mention the third-party right of appeal in case I do not get to speak later, although I hope that the convener will let me in.

The Convener: I remind all committee members that the committee is not a vehicle for presenting their political views on any subject. We are here to listen to our witnesses, who will respond to questions. I will allow Ms White to continue her lines of questioning but I remind her to stick to them.

Ms White: Other committees let members have a little more freedom. The view that I expressed was not my political view but that of the 86 per cent of consultation respondents who asked for a third-party right of appeal.

The Convener: I ask you to stick to questions.

Ms White: It was not my political or personal view but the community's view.

Will the new planning obligation system represent an improvement on the current arrangements under section 75 of the 1997 act? The question is not about enforcement as such.

Anne McCall: Again, the principle behind the proposals is welcome. I understand that the intention is to make the planning obligations that are arrived at between developers, those who have an interest in the land and local authorities more open and available on a public register. I have been involved in negotiating a number of section 75 agreements, which can be opaque and difficult for people to understand. Anything that makes agreements more open, and makes it

easier for communities to understand how they have been reached and what they are, is to be welcomed.

Ms White: What are your views on unilateral obligations?

Stuart Hay: Are you referring to good neighbour agreements?

Ms White: I am afraid that I am probably not allowed to ask any questions about good neighbour agreements because another member is going to ask about them next.

Anne McCall: Scottish Environment LINK does not have a view on unilateral obligations.

Ms White: Okay. Thank you.

The Convener: We will now discuss good neighbour agreements. Are the proposals relating to good neighbour agreements welcome? Will such agreements bring any benefits?

Stuart Hay: Good neighbour agreements are a positive development, and we are encouraged by their being included in the bill. They are a good way of addressing community concerns. Currently, there is nothing to stop voluntary agreements, but including good neighbour agreements in statute and giving them status is a good thing. There is a lot of evidence over a number of years—from the United States of America—that such agreements work and can address community concerns.

The Convener: What specific benefits to communities will result from good neighbour agreements?

Stuart Hay: A dialogue will be created between the developer and the community and mediation will be involved. A development may not be particularly pleasant, but what has been proposed would try to address the key issues for the community and things that could make the development acceptable. There would be a positive dialogue between the community and the developer and they could go forward in partnership.

Anne McCall: I want to mention something that was raised in previous evidence. One attraction of a good neighbour agreement is that it offers developers and local communities the opportunity to enter into a contract. Because there would be a contract between two bodies, both would be able to enforce the agreement.

We were a little concerned about the Executive's evidence, as it appeared that only the local authorities would be able to enforce the contract, but having read John Watchman's evidence and considered the bill in more detail, I feel confident that Mr Watchman nailed what the bill will provide. We would be concerned if only local authorities could enforce good neighbour agreements. Mr Mackinnon of the Scottish Executive seemed to suggest that if a good neighbour agreement should become a condition of a consent, local authorities would be able to enforce a condition that was applied to planning permission in relation to a good neighbour agreement. However, our basic point is that good neighbour agreements are a good idea. They will provide local communities with an opportunity to talk to, agree with, and then enforce an agreement with a developer without necessarily having to rely on a local authority for that to happen.

The Convener: Some of Mr Watchman's evidence was helpful, but I recollect that he was quite hostile to good neighbour agreements.

Anne McCall: I noted that.

The Convener: That was somewhat disappointing. Last week, when he gave evidence to the committee on behalf of the Law Society of Scotland, it was suggested that good neighbour agreements could potentially either duplicate a condition of a planning application or detract from the conditions of a planning consent, which could cause difficulties. Does Scottish Environment LINK have anything to say about those suggestions?

Stuart Hay: Good neighbour agreements have a different focus; they are about involving the community. It is in the developer's interest to secure a good neighbour agreement if it can. There is a slightly different process for the conditions that a council imposes to make a development acceptable from its point of view. A good neighbour agreement is about making developments acceptable to the communities that would be most affected and giving them some power to ensure that the agreement is upheld and the developer lives up to its promises.

11:45

The Convener: Your organisations suggested this approach to the Executive. Do you believe that establishing a good neighbour agreement should be one of the planning conditions of a successful application, if it is felt appropriate for the development in question?

Stuart Hay: That should be addressed on a case-by-case basis; however, we hope that, when they carry out pre-application consultations, developers feel that it is in their interests to say to communities, "Such an agreement will allow us to negotiate matters as things progress". It would be good if local authorities were able to encourage the parties involved to enter such agreements, but it would be much better if, in the first instance, they were put in place by communities and developers.

Anne McCall: Bearing in mind the evidence that Richard Hartland gave a couple of weeks ago, I

think that our only concern is what would happen if a developer in a local community spent time and effort on a good neighbour agreement that centred on a commitment to provide certain things in their development, but the local authority then felt that such provisions were inappropriate or should not form part of a development consent. If a good neighbour agreement is to work, it should be developed with reference to the local authority to ensure that a workable solution is reached that satisfies not two but three points of the triangle.

The Convener: Communities are often vexed by the lack of enforcement in planning consents. Will the bill's proposals address those concerns?

Stuart Hay: Temporary stop notices will be useful in that respect, and we hope that local authorities will be a bit keener to use them than they have been to use their existing—and quite considerable—powers. The question is whether they are using those powers fully and if not, why not. Enforcement is neglected; it is simply not given the priority that it should be. If the measure gives local authorities more of an incentive to tackle the minority of developments that concern communities, that will be a positive step.

Although we think that the proposed enforcement charters represent a positive move in one respect, we are not sure why a national set of standards or guidance on enforcement has not been suggested. After all, the same system applies throughout the country. We should have one set of national standards that lets everyone know what local authorities are expected to deliver instead of having local authorities simply duplicating each other's work when drawing up their own charters.

The Convener: How else could we ensure that we had a proper regulatory framework for enforcement?

Anne McCall: Some of the core suggestions that we have made to the Executive are not dependent on legislation. Many enforcement issues have arisen not only because of local authorities' reluctance to take such action, but because of the lack of available staff at particular times, the difficulty of finding someone to contact in a local community, the expertise and availability of enforcement officers and the decision by some local authorities to get developers to help with the cost of enforcement officers. Finding a suite of solutions to deal with such problems might allow such action to be taken effectively and when people want it to be taken.

Good neighbour agreements might also go some way towards giving local people direct access to the developer if, for example, they need to discuss annoying niggles. After all, although such matters arise regularly and, cumulatively, can lead to many problems in local communities, they probably fall short of requiring full enforcement action.

Mary Scanlon: I understand that, last week, a consultation on national scenic areas was launched and that amendments to incorporate such provisions in the bill will be lodged at stage 2. Your submission says much about the issue, but do you intend to respond to the Executive consultation? How could the bill provide greater protection?

Bill Wright: It has been a long-standing ambition of Scottish Environment LINK to strengthen provisions on national scenic areas and we welcome the consultation. It is worth reminding the committee that Scottish Natural Heritage gave evidence on NSAs to the Scottish Executive as far back as 1999. We are now faced with some difficulties. The consultation on NSAs has only just been launched, whereas we had hoped that they would be covered in last year's white paper. That would have allowed us to contribute balanced views to the scrutiny of the bill's proposals for NSAs. There are concerns about process and procedure. Who is to say what will come out of the consultation and what might be introduced at stage 2? There will not be the same scrutiny of later provisions as of already existing provisions. We hope that more parliamentary time will be devoted to the matter once there has been a full response to the consultation.

Scottish Environment LINK supported fully the SNH recommendations to the Executive back in 1999. We welcome the proposed statutory recognition for NSAs. That is a big step forward for us. There will now be an opportunity to create new national scenic areas and to look at the boundaries that were established as far back as the 1970s, so it is a timely opportunity to review them. However, the Executive consultation does not say what will be proposed in the bill. I remind the committee that many people in Scotland are not aware of the public consultation, so there is a procedural issue there for us.

The test for national scenic areas gives us the opportunity to create a sound statutory designation. However, the consultation mentions no new obligation on local authorities—or indeed on any other public bodies—to protect such areas, although that idea was proposed in the original SNH evidence to the Executive back in 1999. In that respect, there is no added value in the consultation.

The consultation says that local authorities "should be encouraged" to prepare management strategies. That is not a duty on local authorities, as it is in many other environmental areas such as, for example, nature conservation. We are

distressed that such a duty has not been included in the consultation.

As we say, we are facing a procedural difficulty in that the consultation has come very late in the day. I think that it was indicated to us in meetings with the Executive during the course of last year, so we hoped that there might be something about a duty in the white paper. The wider public in Scotland should have been given something to comment on, as we have been.

Mary Scanlon: Thank you for that. I agree that it would have been helpful to have proposals in the bill. I learned only this morning that NSAs were out to consultation and would be the subject of amendments at stage 2. However, we are where we are. It would be wrong for me to go into detail about the points that you raised because I do not have that information and obviously, it is not in the bill. However, I hope that your concerns will be raised at a later stage and perhaps you will wish to propose amendments.

As you know, I represent the Highlands and Islands, and my colleagues would not forgive me if I did not mention—

The Convener: I am sure that we would, Mary.

Mary Scanlon: I think that other committee members know exactly what is coming. Do you think that there is something within the national scenic areas regulations or some aspect of their enforcement that could be strengthened under the bill, which would help protect communities from certain huge developments between Beauly and Denny, as well as other huge developments on virgin, wonderfully scenic land between Ullapool and Beauly and the plethora of wind farms that we have throughout the Highlands? Does the bill give us an opportunity to look into those matters?

Bill Wright: In relation to the current debate on renewables, but without being drawn too far into the particular circumstances of the Beauly to Denny power line, my attitude is that Scotland's scenery is something positive that we have to offer. At Scottish Environment LINK we are attempting to be positive about renewables and the quality of the landscape.

As I said, I will not be drawn on the Beauly to Denny line, or on the extension towards Ullapool. I can say, however, that the matter is to an extent being addressed through the new Scottish planning policy—SPP—that the Scottish Executive is drawing up; Anne McCall and I are Scottish Environment LINK members of that group. We hope that the Executive will produce something in that regard in the relatively near future—certainly within the next few weeks.

The issues around renewable energy sources and the Beauly to Denny line happen to have come up in the past two to three years. National scenic areas will have a long-lasting designation. Their counterparts in England and Wales, the areas of outstanding natural beauty, can have quite long-standing, secure designations. That gives a degree of clarity, not only for those of us who are great lovers of Scotland's landscape, but for developers. I suggest that, if NSAs had greater standing, we might not be in the guddle—if that is an expression that I am allowed to use in the Scottish Parliament—that we are in when it comes to renewables.

Mary Scanlon: Thank you for the points that you have raised—it was nice to get a positive response to my questions.

John Mayhew: I would like to add something on that. I promise that I will be quite brief. The answer to Mary Scanlon's question is undoubtedly yes. We think that the proposals in the Executive's consultation, and also the proposals that we are making on general functions for safeguarding and promoting NSAs, together with a compulsory requirement to prepare management strategies, would help strengthen national scenic areas.

The developments to which you refer have many impacts. Wind farms and pylon lines have impacts of many different sorts, and NSAs would help tackle the landscape aspects of such projects.

Mary Scanlon: Yes, they would.

John Mayhew: They would not necessarily help tackle the other aspects. NSAs are the most wonderful landscapes of Scotland. They are the jewels in our crown. Anything that we can do to strengthen them, to make them more than just lines on the map and to make them effective will do something towards achieving what we all want, which is renewable energy developments in the right place.

Many of the decisions on renewable developments and pylons are made by the Executive, not local authorities. The question is whether the strengthening of NSAs would have the desirable effect on the decision making of the Executive's energy and telecommunications division, as well as of local authorities. If it does, that would help.

The Convener: We have skirted around this issue all morning, and I am sure that lots of committee members have an interest in it. Mr Harvie would like to give you an opportunity to express one of your major concerns.

12:00

Patrick Harvie: I had thought that this question would be the first kick of the ball, but it is a wee bit late for that. Rather than asking for your general views on the third-party right of appeal, I will ask

you to comment on criticisms that I am sure you have heard. I will leave the question of fairness for the moment, but it is argued that if the third-party right of appeal is introduced, there will be extra delays in the system and damage to the economy. Why are such arguments wrong?

Stuart Hay: We are asking for a limited right of appeal and only in specific circumstances. It will not be a free-for-all. We want to target the most controversial cases, so there will be some overlap with cases that should be called in by ministers.

We are not asking for a massive change. However, when things go wrong, communities must have a right of appeal. They should be able to have a decision reviewed by a third party in the form of a reporter. Even if they do not get the result that they want, they will at least have seen the issues being explored and will have understood the arguments. In about 50 per cent of appeal cases in Ireland, even if a development is not stopped, additional conditions are placed on the development to make it more acceptable. The appeal process is therefore important.

As to why the third-party right of appeal will not destroy our economy, plenty of evidence exists to show that Ireland does quite well despite communities having such a right—and their right of appeal is much stronger than the one that we are proposing for Scotland. As I say, we are proposing a limited right of appeal, but the Irish have a full right of appeal. Sweden is another example of a successful economy with a third-party right of appeal that does not seem to hamper it.

Bill Wright: The important thing is not to get a rapid decision but to get the right decision. The planning process has to be sustainable. In the white paper, the First Minister said that the planning system should have economic growth as a purpose. We would probably agree with that, but we would add that the system should also have sustainability as a purpose. That means environmental and social sustainability as well as economic sustainability.

In my community and in communities the length and breadth of Scotland, I have seen what people have to go through in order to engage with the planning system. Convener, at the communities event here in the Parliament, you will have seen the frustration with the present system. The Parliament had invited people from communities across Scotland in order to ask them whether they supported the third-party right of appeal. There was virtually unanimous support for it—although I know that issues arise over who really represents communities. However, I believe that the third-party right of appeal would be very popular.

We must have a sustainable planning system without the present frustrations. At the moment, ordinary people have to get involved in big fundraising schemes. On the edge of one town in Fife, £89,000 had to be raised in order to engage with the planning system. The third-party right of appeal will let people trust the system and will give them a sense of ownership that is missing at present.

Patrick Harvie: I think that most people know that I agree with the thrust of your arguments, but I want to pin down the question of unintended consequences. Even if the third-party right of appeal is fair and popular, are you completely satisfied that the predicted negative consequences would not come about? If there is a risk of negative consequences, is there any way to achieve fairness and trust in the system other than through a third-party right of appeal?

Anne McCall: The core thing for us to convey to the committee is that the debate about the third-party right of appeal has become terribly polarised. We have not been putting it forward as a mantra or because it is the only thing we have got and we want to hit everyone with our big stick. The third-party right of appeal is a proposal that we have seen work in other countries.

We have been engaged with the Scottish Executive in examining the planning system since 1997, when the fish farm issue first arose. Since 1999, we have been involved in a range of consultations. Throughout that process, there have been debates on the pros and cons of elements of the system. As Jim Mackinnon reminded us, we now have a package of measures that the Executive believes will deliver more effective community involvement and a more efficient system. As individuals who engage with the system frequently, we agree that those are laudable aims. However, we are not convinced that the package of measures will necessarily deliver the greater community involvement that the Executive seeks to achieve.

We investigated the mechanism of a third-party right of appeal, looked at it in the round and concluded that it would be useful in four specific areas. We applied it to the set of measures that are on the table. We are convinced that if it is introduced, it will not be a bolt-on, a burden or a problem but will be a mechanism to make the other bits of the process work better.

The committee has heard from the inquiry reporters unit that how many appeals there might be is a matter of informed judgment. There is no reason to believe that the scale of appeals would be significantly greater in Scotland than it is in Northern Ireland. Given the focus of our system on pre-application consultation and front loading, we think that there would be fewer appeals.

We also examined other countries that have a third-party right of appeal mechanism. They have

higher rather than lower gross domestic product per capita than Scotland has. Having a third-party right of appeal has not served to scupper their economic growth. We believe that our proposal will help to make the system work. We are not proposing a third-party right of appeal to be difficult and unduly negative or because someone told us to. We are not getting some economic gain from it. We are proposing it because we believe that it is a good idea.

Patrick Harvie: That was clearly argued. I will let someone else have a go.

Ms White: Should a third-party right of appeal be introduced with limits and not just be a free-for-all, as stated by Stuart Hay? It could serve as a check and a balance between developer and community, leading to less confrontation between the parties. Even with a pre-consultation mechanism, developers would know that communities and individuals have the same rights that they have.

What is the main issue that people raise with you that persuades them of the need for a third-party right of appeal? Are they concerned about objections that they have made to developments on council land being turned down? In most cases that I am told about, a council sells land and then, all of a sudden, there is development on it, to the concern of the local community. There is an anomaly in the planning system—I am aware that a third-party right of appeal might not be necessary to deal with that. However, up to 70 per cent of my postbag concerning appeals is to do with councils rather than developers.

Stuart Hay: The third-party right of appeal will reinforce the plan-led system. Developers will have to try harder to ensure that the development that they want is in the plan from the beginning. It is not a departure. Developers will have to work harder in engaging with communities through the process. We think that it sits well with the Executive's proposals as it reinforces the system and does not run against it.

Local authority developments are controversial because people feel they do not get a fair hearing on them. There are some checks and balances such as the requirement to notify the Executive. However, given the level of controversy and disquiet in some communities, it is clear that they are not working.

The white paper contained Executive proposals to address that. One difficulty with the present system is that although the Executive considers applications, that does not always lead to an inquiry. People are concerned when there is no inquiry and no transparency and it is not clear to them why the Executive has not passed on an application to the reporters unit. A third-party right of appeal would introduce a much clearer and more transparent process.

Mary Scanlon: In Ireland, there is little upfront consultation, so a third-party right of appeal can be justified. However, the system in Ireland is different from the system that is proposed in the bill. You say that the proposals would lead to fewer third-party appeals, if such a right were introduced, but could it not equally be argued that the bill—which we are committed to make work as set out—negates the need for a third-party right of appeal, because of the weight that it gives to meaningful consultation and engagement?

Anne McCall: I assume that the Executive's intention in drafting the bill and in rejecting even a limited third-party right of appeal was to address the issues that were raised in the consultation on third-party right of appeal by front loading the system. That seems to be the policy intention. We argue not that a front-loaded system is a bad idea but that, to make the front loading work, we need something at the end of the process to ensure that the engagement is meaningful.

I am guilty of making the comparison to Ireland, but I am always reluctant to look specifically at other countries. We could equally consider Australia, New Zealand, Denmark or Sweden, all of which have slightly different planning systems, which makes comparisons tricky. In the consultation on widening the right of appeal, the Executive estimated a certain number of potential applications, depending on which criteria were applied. As the proposals in the bill are aimed specifically at addressing issues at the outset, I assume that the potential for appeals would be reduced drastically. As you said, strong emphasis has been placed on trying to deal with problems at the beginning. That is the right emphasis and it is absolutely what we want but, in the end, if the process does not work, even occasionally, all parties should have equal access to the same rights of redress.

Mary Scanlon: I have strong connections with the county of Donegal in Ireland—my colleague Christine May has even stronger connections with Ireland. My point is that you keep using Ireland as an ideal example of a country that has a third-party right of appeal, but you must take into account the fact that very little upfront consultation takes place in Ireland. If I lived in Ireland, I would probably argue that the third-party right of appeal there is meaningful, necessary and justified, but you cannot argue that we need a third-party right of appeal simply because one exists in Ireland. We will potentially have huge upfront consultation here that does not exist in Ireland, so you are not comparing like with like.

Anne McCall: I take your point. I am sorry if that is what you took from my statement. My intention

was not to say that our system is the same as the one in Ireland, because clearly it is not.

Stuart Hay: The point is that we need to ensure that the consultation is meaningful and that people's views are taken seriously. Under our suggestion, developers and local authorities would know that if they did not get decisions right, third parties would have the power to appeal in certain circumstances. The developers and local authorities would then try much harder to engage with communities—that is the point of a third-party right of appeal.

Jackie Baillie: I will test the witnesses' patience with two short questions. First, as I have long been involved in the process of community engagement, I wonder whether you think that the point of the bill is to deliver more of that. Is the problem a lack of engagement or decoupling at the end of the process? Is the principle the important point?

Secondly, I welcome your comments about the polarisation of the debate and your clarification of Scottish Environment LINK's view. I will press you on whether a third way exists. Currently, local authorities have a right of notification or referral to the Scottish ministers in defined circumstances. Could communities be afforded the same right in the same circumstances?

12:15

Anne McCall: I am closely involved with the Royal Town Planning Institute and I am aware of its proposals, which focused heavily on increasing the community right to ask for call-ins. That approach would offer a slightly increased right for communities to require or ask the Scottish ministers to re-examine a decision. However, something like 55,000 planning applications are made every year. In the last full year for which we have records, only 15 of those applications were called in. We have the utmost respect for the Scottish Executive inquiry reporters unit in our involvement with it, but even if we assume the increase that the reporters talked about, that would mean that only 85 applications were called in, which would still be a very small percentage. The capacity for the inquiry reporters unit to investigate cases thoroughly is modest.

With an increased call-in rate, we would struggle with two problems. First, the reasons for call-ins are at best opaque, although they could be clarified. Secondly, the procedure that is followed when an application is called in, how it is considered and who determines it are also opaque and I see no proposals in the bill to change that. The outcome is that a tiny percentage of applications are determined by the Scottish ministers and go to inquiries. That might be because there are few cases to answer. The proposal does not offer much reassurance, because how the process works is unclear.

The Convener: I hope that the bill will build confidence in communities. How would a third-party right of appeal improve the confidence of communities?

Stuart Hay: People need to know that their views will be taken seriously and that if that does not happen, they will have redress. The bill does not address that point. People can write to tell ministers that they dislike a planning decision, but the ministers do not have to do anything about that. I am sure that MSPs have been approached by constituents about decisions that clearly need to be re-examined and have written to ministers, although there is no guarantee that anything will happen.

A third-party right of appeal would at least ensure that decisions were re-examined in the prescribed circumstances. I return to the fact that the Executive's proposal was limited but would have addressed the key concerns. Communities need to be able to put their views to an independent third party—a reporter who takes everything on board, has expertise and is not biased. Communities might not obtain the decisions that they wanted, but they would at least know that their arguments had been listened to and considered. Such a process would be much more satisfactory.

The Convener: If the public consistently did not get what they wanted, would public confidence be bolstered or undermined? People might believe that they had a meaningless right of appeal.

Stuart Hay: The only argument to that is that such outcomes do not affect developers, who still appeal decisions although they do not always get what they want. The same would apply to communities.

The Convener: You said that a third-party right of appeal would give developers an incentive to try harder to engage with and listen to communities. Rather than having a right of appeal that might be meaningless, although it would allow people finally to say publicly how unhappy they were, would it not be better to place much stronger obligations on developers to engage properly with communities, so that the concerns of communities were taken into account much earlier? Would that not do more to bolster community confidence?

Stuart Hay: I would not argue with that. Pre-consultation is a good thing, but it is different from a third-party right of appeal, which would come at the end of the process in certain circumstances. A third-party right of appeal would be a final safeguard in the small minority of cases in which people have major concerns, do not trust the

council's views, do not think that the council has considered matters objectively and want a third-party reporter to reconsider the case. People will win cases and lose cases, but at least the arguments will have been considered and there will be a report on why a decision has been made. At the moment, there is no such safeguard in the system.

I can give an example of an application for a development that a community opposed and which ministers called in. The case went to an inquiry. The decision was not changed, but the council's original decision was altered. More conditions were attached, there was to be better landscaping and so on. The community's engagement in the process improved the decision that was made and the development. That is what would happen with a third-party right of appeal. As I said, ministers called in that application, but we would look for much more discretion for communities to have developments looked at that they see as controversial.

The Convener: You have given an example of what happens, but the new safeguards that the bill proposes—good neighbour agreements, enforcement, pre-consultation and involvement with developers—will achieve all the objectives that are sought. I am concerned about what happens to a community's confidence when a bad decision is made. The community will still be resentful. We should ensure that bad decisions are not made, but I am not convinced that giving somebody a right of appeal that will ultimately not change anything will bolster community confidence. We should ensure that communities are confident that they have been an integral part of the decision-making process.

Stuart Hay: I accept that. The issue is involving people along the line, but the problem at the moment is where communities are led to. A point will be reached at which a decision is made that seems to them to be clearly unfair. I know of communities that have received legal opinions that a decision must be reconsidered, but they cannot afford to pursue matters through the courts. That is more frustrating than anything that would be created by TPRA, which would address frustrations, as people would know that their concerns would be addressed in an inquiry.

Christine May: I welcome much of what the panel has said in welcoming the bill and the proposals for strengthening community confidence, but I have a suggestion to make for the sake of argument. Your insistence on having TPRA at the end of the process means that you are almost willing all the other measures not to succeed. Can you reassure us that you seriously support those measures and that you are seriously looking for them to succeed?

Anne McCall: I would like to turn what you have said on its head and ask whether you would ask a developer the same question.

Christine May: Yes, I would.

Anne McCall: We are seeking a system that works and we are seeking to avoid confrontation; appeals; and proposals for which developers will not receive consent, which local authorities do not like and with which local communities do not want to live. Planning systems that involve such things do not work.

It is clear that the Executive has tried to put together a package of measures in the bill that addresses a complex system. We genuinely welcome its emphasis on greater community engagement, and many developers have said that they genuinely welcome greater community engagement. We welcome the opportunities to have good neighbour agreements, although I have still to hear the response of business interests to that idea. However, at the end of the process, developers will be left with a right of appeal that will not be shared by the folk with whom they have negotiated, discussed matters and had pre-application hearings. All the elements of the process will involve two sets of people at a table, one of which will have more rights than the other.

I refer to what the convener said. Building confidence is pivotal, but confidence results from people feeling that they are being treated seriously and that they have an equitable role in the system. There continues to be a system in which a developer can challenge the decision of a local authority to reject a proposal. Developers continue to have more rights to pursue what they want than a local community has to pursue what it wants, although it will have to live with the consequences for the next 20 to 30 years. That is the core issue. We want people to have confidence in the process and we want consultation. The bill is a good one and it contains many good provisions, but if the parties who come to the table are not on a level playing field, the process will not be particularly meaningful.

Christine May: So you would continue to argue that all the obligations that have been put on developers and local authorities to have meaningful engagement with the community and all the measures that the convener outlined are insufficient to give the balance that you seek.

Anne McCall: Those measures and obligations are welcome, but we would like there to be some security that they will be applied meaningfully and in the long term. The combination of not having an equitable right of appeal and having all the detail left to secondary legislation means that it is difficult for us to be happy to buy into the package.

Bill Wright: On the issue of parity, it has been put to the committee that the applicant has an interest in the property and in the development opportunity for the purpose of their development of social and economic welfare. In parts of rural Scotland the consequences of planning decisions are often felt by communities that have to live with the consequences of the planning decision for decades afterwards, whereas the developer may well be a company with shareholders who live nowhere near the site. People in the communities are the ones who have to live with the consequences of the decisions. Parity should act as a safety valve: it should ensure that people have confidence in the process and feel that they have some ownership over a decision that was made years previously.

Christine May: I am more inclined at this stage to suggest that that confidence would be better built up at the beginning of the process. One member of the panel cited experience of an appeal that resulted in greater safeguards being given to the community, but I have experience of appeals that have resulted in the inquiry reporters team granting the developer a consent that gave fewer safeguards to the community than were originally in place. I am struggling to establish the relationship between your proposals and the safeguards and public confidence that the convener mentioned. How will your proposals prevent bad decisions from being made?

Stuart Hay: We want the third-party right of appeal to be exercised as infrequently as possible. We want the process to run smoothly. A measure of how good the system is will be how many third-party appeals are made. If there are no third-party appeals, that means that everyone is happy. It would be very difficult to achieve that, but that is what we should work towards. We cannot measure the level of satisfaction with decisions now because third parties do not have the right of appeal. The only option that is open to communities is to pursue cases through the courts, but it costs £20,000, £30,000 or £40,000 to get a decision reviewed. That is unacceptable to most communities. That is why they are saying that there must be a safety valve.

Christine May: Thank you. I have pursued the issue as far as I can.

The Convener: I will allow John Home Robertson to come in. I remind John and members who have not yet spoken that at this point we should not stray into discussion of our personal opinions. The purpose of today's session is to give our witnesses the opportunity to put forward their views. We should listen to them and cross-examine them on their views so that when we discuss our report we can reach a conclusion about who is right, who is wrong and with whom we agree.

Mr Home Robertson: I understand the superficial attraction of the principle of a third-party right of appeal but, like the convener, I am worried about its practicality. I want to explore the experiences of call-ins by the Scottish ministers, which have been mentioned. Call-ins represent a sort of third-party right of appeal. Both Mr Hay and Ms McCall have referred to the procedure. I put it to you that the procedure is deeply resented by some communities. If something has been thrashed out at local level and there is a pretty broad consensus that people want a development to go ahead, but it then gets called in on some pretext and there is a long delay and an inquiry, people can get angry about that. It is bad enough when ministers exercise that power, but can you imagine how some communities will feel when a development that they really want to go ahead is obstructed by a pressure group, by an individual or by goodness knows who from another part of Scotland throwing a spanner in the works late in the process? Have you thought that through?

12:30

Anne McCall: Absolutely. We regularly write to Scottish ministers asking them to reconsider decisions. The core issue with call-ins and with most aspects of planning policy is that for everything that one comes up with on one side, there will be something else on the other side. There will be a community that does not want a development and wants to write to Scottish ministers to get it called in because people in that community think that a bad decision is going to be made, but there will be another community that will write to Scottish ministers saying, "These jobs are invaluable to us. Please don't call the development in. We want you to build it tomorrow."

We are not making a value judgment on those decisions. We are talking about a process that we engage with regularly, about making that process accessible and predictable for the people who are involved with it, and about giving all who are involved the same access to the same decision-making processes. If we are going to have a call-in process, it is not satisfactory to limit it to local authorities being required to notify Scottish ministers and ministers perhaps taking account of letters from local communities. As I said to Jackie Baillie, we find the present call-in process fairly opaque and difficult to follow and its decisions unpredictable.

Mr Home Robertson: Too damn right.

Anne McCall: As far as the third-party right of appeal is concerned, we are looking simply for a process that ensures that people know, when they enter the process, that they have the same rights as the person next to them. It is not intended to be a value judgment on decisions, because every

decision is made on its merits. I applaud the convener's determination to have fewer bad decisions. That is a good idea, but I cannot see how having greater scrutiny of those decisions through the mechanism of third-party right of appeal is likely to increase the number of bad decisions. I can only conclude that greater scrutiny—given that that is what the Parliament is here to do—is likely to reduce the number of bad decisions. That is what the third-party right of appeal provides.

Mr Home Robertson: It could mean that things take an awful lot longer, could it not?

Anne McCall: There are two issues to discuss. One is whether, in principle, providing all parties with the same rights is fair and equitable and is more likely to lead to better decisions. The second is about the procedural element. Clearly, the Executive is struggling with the implications of all the changes that it is proposing at the moment. Local authorities will struggle and we are also going to struggle. People need to take change on board and make it work, whether it is a culture change, a financial change or a change in skills—I am currently experiencing a lot of problems in trying to recruit planners. There are issues involved with change, but that does not mean that change is a bad thing.

The Convener: That concludes the committee's questions. I thank the witnesses for spending almost two hours with us. Is there anything further to add that has not been covered?

Anne McCall: I think that the committee has been very patient and interested. Thank you very much. That is all we have to say.

The Convener: Should you have any supplementary evidence, please do not hesitate to write to us. Thank you for attending.

12:34

Meeting suspended.

12:37

On resuming—

Subordinate Legislation

Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2006 (SSI 2006/28)

The Convener: The amendment regulations were laid on 26 January 2006 and are subject to the negative procedure. The regulations do not comply with the 21-day rule, whereby negative instruments should be laid before Parliament not less than 21 days before they are due to come into force. In correspondence, the minister has justified that on the basis that the regulations are an integral part of the registration scheme, which is due to take effect from 31 March 2006. A letter from the Executive, which has been issued to members, explains in detail the reasons why the Executive considered it necessary to breach the 21-day rule.

The amendment regulations propose a standard fee for an application for registration by a landlord to a local authority, thus replacing the scheme in the 2005 regulations, whereby authorities could set their own fee.

Do members have any comments on the regulations or the fact that they do not comply with the 21-day rule?

Ms White: I have a positive comment: I am glad that the fee will be a standard one, because there was difficulty when there was no standard fee for houses in multiple occupancy.

The Convener: The committee would welcome the introduction of a standard fee, as we took evidence on that very subject. Under the circumstances, the Executive's explanation of why it breached the rule is satisfactory.

Is the committee content with the regulations?

Members *indicated agreement*.

The Convener: Therefore, in its report to Parliament, the committee will make no recommendations on the regulations. I ask members to agree that we report to the Parliament on our decision on the regulations. Are we agreed?

Members *indicated agreement*.

The Convener: Before we end today's meeting, I advise the committee that we are losing Jenny Goldsmith, who has been a very good servant to the committee as one of our assistant clerks. She is abandoning us for the joys of the Environment and Rural Development Committee. She will be sadly missed by all of us who have benefited from

her assistance and expertise over the past year or so. On behalf of the committee, I wish Jenny well.

Members: Hear, hear.

Meeting closed at 12:40.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 17 February 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron