COMMUNITIES COMMITTEE

Wednesday 1 March 2006

Session 2

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COMMUNITIES COMMITTEE
7th Meeting 2006, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Euan Robson (Roxburgh and Berwickshire) (LD)

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING GAVE EVIDENCE:

Hugh Crawford (Royal Incorporation of Architects in Scotland)
Colin Graham (Miller Developments)
Debbie Harper (Scottish Power)
Michael Levack (Scottish Building)
Allan Lundmark (Homes for Scotland)
Alasdair Macleod (Airtricity)
Harry Malyon (Npower Renewables)
Richard Slipper (GVA Grimley LLP)
Maf Smith (Scottish Renewables Forum)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 6

Scottish Parliament

Communities Committee

Wednesday 1 March 2006

[THE CONVENER *opened the meeting at 09:30*]

Planning etc (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): Welcome to the seventh meeting of the Communities Committee in 2006. We have received apologies from Tricia Marwick. Sandra White, who is the substitute member for Tricia Marwick, might join us today, but we are unsure about that.

The only item on the agenda today is stage 1 of the Planning etc (Scotland) Bill. We will hear evidence from two panels of witnesses. I welcome the first panel of witnesses, who represent building, development and architectural interests. With us we have Michael Levack, the chief executive of Scottish Building; Allan Lundmark, the director of planning and communications in Homes for Scotland; Colin Graham, the developments manager for Miller Developments; Richard Slipper, a partner in the Edinburgh office of GVA Grimley LLP; and Hugh Crawford, the convener of the environment, housing and town planning board of the Royal Incorporation of Architects in Scotland.

I will start by asking a general question about consultation. Do you believe that the Scottish Executive has effectively engaged with people on its planning proposals? Were you able to influence those proposals in any way?

Michael Levack (Scottish Building): There has undoubtedly been far-reaching consultation. I think—having taken an interest in that and read reports of the various meetings that have been held—that the question is how that information and the concerns and comments of the various parties can be brought together to influence the new planning system. We are perfectly satisfied with our ability to provide comments and make observations.

Richard Slipper (GVA Grimley LLP): The Executive has issued a commendable number of white papers and other preceding documents that, from a planning consultancy point of view, are easy to follow, well laid out and thorough. One of the key comments would be that it has taken many years to get to this point in relation to pre-consultation. In the industry, there is a full understanding of the issues and the chief planner and his team have engaged in a good level of explanation in order to take the information to the private sector.

Allan Lundmark (Homes for Scotland): The Scottish Executive should be commended on the way in which it has engaged with stakeholders in this process, from the early consultation period up to the introduction of the bill. It has engaged fully with Homes for Scotland, as a body that represents the housebuilding industry, and it has left us with the impression that everything that we have been saying to it has been carefully considered before proposals have been brought forward. It has set a good example of the way in which the public sector should engage with the private sector.

Hugh Crawford (Royal Incorporation of Architects in Scotland): It has been especially helpful to have had the opportunity to attend in Victoria Quay seminars at which there is a hands-on approach and clear decisions are made after debate.

The Convener: Do you believe that the bill will allow for a change of culture with regard to development, and ensure that the culture allows appropriate development and encourages economic growth in Scotland?

Michael Levack: There is nothing in the proposals that would be a barrier to cultural change, but I do not think that, in themselves, the proposals will bring about that cultural change. It is difficult to change the culture in any industry or group. A significant problem that we encounter the length and breadth of the country when we speak to local authorities is that they struggle to recruit and retain planners, particularly in the more rural areas. Authorities may also struggle to give planners a clear career path in their organisations.

Stability is needed in order to implement cultural change. It will probably take a long while for the new system to bed in and to become second nature to people. Much has to be done to assist local authorities to recruit and train new planners. The papers that I have read contain a note about how to assist authorities to recruit and retain the right people. Cultural change is a tricky objective.

Allan Lundmark: The bill will create an opportunity for us. I suspect that all of us want Parliament to enact the bill quickly, after which we will move on to seeing how we make the planning system operate.

If I had to summarise the current system, I would characterise it as being a system that is obsessed with regulating and controlling development. In contrast, the bill suggests that we need to adopt a system that encourages and facilitates development and which exploits development opportunities and ensures that their impacts are properly mitigated, so that communities gain wider

benefits. The challenge for the planning system is in moving from a regime of regulation and control to one of targeting and facilitating investment. That is a challenge for the way in which the legislation is used rather than for the legislation itself.

Richard Slipper: I will add a comment about culture and development. In my submission, I suggested that perhaps through the bill, and certainly through further work by the committee and through secondary legislation, closer examination could be made of the good effect that development can have on the economy, on growing the population and on achieving a smart, successful Scotland—on meeting the Parliament's overall aims. I do not say simply that all development should be allowed, but that we should consider more carefully a presumption that good development is good for the economy, the population and the country's social development.

Linked to that is the suggestion that the aims of the national planning framework, which I suspect we will discuss, should have more bite over the period to which the framework applies. What will be its aims for population growth and its targets on economic matters such as gross domestic product? Such information might help people to understand fully that the planning system is intended to deliver development in an acceptable form.

The culture will have to adjust to the point or moment of decision in the process. Consultation will be redoubled and greater effort will be expended on it, but planning authorities will have to be enthused, happy and proud about the decisions that they make. The system is one not of prevarication but of decisive action and progress.

The Convener: Several witnesses have highlighted the need to change the culture of local authority engagement. We will touch on that later in our questions. As developers and stakeholders in the planning process, are you under any obligations to be part of the culture change? If so, what obligations should be placed on you?

Hugh Crawford: Architects are fixated on or obsessed with the quality of design and would like design to be highlighted and given more prominence in the creation of places. A progression of documents has helped with that aspiration.

The process encourages the profession to strive for and create better design. We look to planning professionals to help in that process and to be aware of what can be achieved through design and the creation of places that will be the heritage of tomorrow.

Colin Graham (Miller Developments): As a developer, I can give the committee the inside track on the culture change that we are expected to deliver. It is important that developers be seen to be part of the process; there is an obligation on us to make our half of the system work. I have no doubt that a number of developers have in the past effectively played the system, so it is incumbent on us to help to make the proposals in the bill work.

I have seen culture change happening already. Developers are now paying much more regard to the development plan-led system and to the concept of sustainability. I like to think that, going forward, we will be able to work in partnership with local authorities and the Scottish Executive to make the planning system much more transparent, efficient and successful in delivering good development.

Allan Lundmark: We can look at the planning system as a distortion in the market. The market responds and adjusts to such distortions, which condition the way in which the development industry reacts. At the moment, the planning system is probably characterised as being confrontational and adversarial, and the market responds to it in that way—that is the game that must be embraced. If the bill suggests that a different approach is required, the market will respond to that. Colin Graham is right to say that there is already evidence that that is happening. The development industry is expected to deliver the approach that he describes; we will do so.

I am less concerned about how the private sector will respond to the bill because that will be dictated by market forces, but I am concerned about the way in which planning authorities will respond. When we talk about culture change, we need to ask questions about what we must do to encourage and facilitate that. There is a sense that part of the problem comes from a lack of political commitment to encourage development. It is also about a management approach. When we consider the issue in those terms, we must ask questions about the resourcing of the planning system. It would not be difficult for someone to persuade me that the current planning system is underresourced—because it is underresourced, it is underskilled, and because it is underskilled, it lacks confidence. We must address that problem.

We must ensure that planning authorities have the staff resources and, more important, the skills that are required for them to take on the new agenda. We must ensure that they have people who understand development economics, who can deal with project appraisals and design and who understand construction and project management. The new agenda is to give planning authorities those resources and skills. If we do that, we will no longer have a planning system that lacks confidence, but a system that is better equipped to negotiate with private developers and to address their proposals.

The Convener: As I said earlier, we will return to the issue of resources. My final question is not about resources. If we put that matter to one side and accept for the moment that the resources will be available—later we will explore with you whether there are enough planners to deliver the bill—will the proposals deliver a planning system that is generally fit for purpose? Is the direction of travel correct?

Michael Levack: The previous question was about the obligation on developers. In my view, they are obliged to provide clear, concise and accurate information. Recently, a friend of mine came to me for advice because he had received a neighbourhood notification for a significant development—a primary school. The information that has been provided by the local authority in question is, to be frank, very poor and misleading. There are differences between the information that the neighbours have received, the information that is in the planning office and the information that is in the local library. Although we are talking about basic elevations and plans, there are inaccuracies in them. As a construction professional, I understand why the errors have come about, but a member of the public would not.

Throughout the proposals, the Executive talks about engaging with the public; words such as "transparency" are used. However, the information that is provided has to be issued in a way that people who have no previous experience of looking at plans can understand. There are many ways to do that, such as the artistic impressions and other means that are often employed to describe larger developments. All of that will aid stakeholders in making reasonable comments on proposals.

The simple answer to the question is that in putting forward proposals, developers have an obligation to provide clear, concise and accurate information. Hopefully, by doing so, they will gain people's trust. People very quickly lose trust in developers who give out inaccurate information.

09:45

Richard Slipper: It is fair to say that my evidence comes mainly from working on major developments in urban areas. Mr Levack's comments are vital, particularly in terms of smaller-scale developments.

If I may, I will return to your previous question, convener. In addition to endorsing the points that have been made on culture change, I want to respond to the pointed question on whether developers are changing their culture. Over the past three or four years, I have handled some major planning applications and that experience allows me to say a firm "Yes." The committee can be greatly confident that developers have, certainly in the major cities of Scotland, increasing abilities in urbanism, master planning, design, transportation and environmental impact assessment. Over the past four years, the skills base in Edinburgh and Glasgow—and further afield in the other urban areas such as Aberdeen and Dundee—has increased.

Increasingly, more resources are being put into managing the process. The job for us as consultants is to pass the messages of legislation and guidance back to developers. We need to tell them that developing will cost more—indeed, that is already the case. Increasingly, developers are prepared to put more into their developments. They have arrived at their own definition of sustainable development, which is a development that has won its way through the hurdles of a difficult process that has probity and thoroughness. In winning their way through, developers win a prize and that gives them added value in which they can invest.

Hopefully, they will move on to develop a higher-quality development that will be awarded a planning or design award, which also helps developers with their long-term investment. In the future, they will be able to prospect for opportunities more intelligently and they will know when and where it is worth spending their resources on detailed public consultation, which already costs a lot more than it did in the past.

In answer to your second question, convener, the bill and the changes that it makes are fit for a modern planning system. Many elements are fit for purpose; indeed, many of them are already under way. We now need to move the debate on to address cultural change, supplementary guidance, political thinking and local authority leadership.

Hugh Crawford: We have to avoid thinking that we have risen to a particular plateau and that, from that vantage point, we have a system that is fit for purpose. The process is dynamic—I have watched it progress over many years. We are now at a particular point of review and improvement, but we will carry on until other influences make it necessary for us to appraise the system again. The bill is as good as we will achieve at this point. The aim of constantly trying to produce a system that is fit for purpose is a worthy one.

Colin Graham: The best answer that I can give to the question whether the bill will give us a planning system that is fit for purpose is, "Probably yes." There are a number of provisions in the bill that developers such as Miller welcome. My concern is that we do not yet have enough detail on some elements. Without them, it is difficult to see whether the system will be workable on a day-to-day basis.

Unfortunately, the question whether the bill will deliver a system that is fit for purpose comes down to resourcing. We can have the best system in the world, but unless it is resourced properly—on both sides of the equation—it is not worth having. I am aware that we will move on to address resources more fully later. At this point, I simply want to point out that the resources that we as developers are required to put into major schemes has risen significantly in the past 10 years. The average budget for a small major scheme, if I can put it that way, is now between £250,000 and £350,000. We are asked to provide impact assessments to do with the environment, transportation, retail and noise, which we are quite happy to do if it makes our case stronger and more robust. However, once we have prepared those reports, which are technical and weighty, the resources on the other side to assess them quickly and competently are not necessarily there.

The Convener: I am sure that we shall return to some of those issues.

Patrick Harvie (Glasgow) (Green): Somebody mentioned the national planning framework—I would like to ask some more questions about that. Given that, under the new proposals, the national planning framework may include specific developments, what impact do the witnesses feel the proposals will have on the development industry in Scotland?

Richard Slipper: We have been able to see the NPF in embryonic form since the first draft came out two or three years ago. It was a helpful lead for us to see an open statement of the Executive's—and, in the future, the Parliament's—views on development at national level. I think that a lot more can be done in that document and that more healthy debate could be had about it to select the national projects that might be fast-tracked or debated at the highest level. We must also weave some targets into that document, and the statute should also say how often that document would be prepared. Simply saying that it should be done from time to time is not good enough if the same legislation says that development plans have to be done every five years.

There is a timescale on the NPF and there is certainly selection of projects, but I believe that there can also be overall growth targets. That would help the NPF to define what Scotland says sustainable development is. It is not good enough for the statute simply to say that the general aim will be for sustainable development, because that could be a world, European or British definition. MSPs have the opportunity to debate what we are going to decide sustainable development is for Scotland over the next five years.

Patrick Harvie: Assuming that we can get a definition, would you support applying it to the NPF and not just to the local development plans?

Richard Slipper: Yes, and I think that what is said in the definition will cascade through the strategic development plans and the local development plans.

Patrick Harvie: Does anyone else want to comment?

Allan Lundmark: One of the problems that we constantly have to deal with is the lack of infrastructure and community facilities to support the developments that we are promoting. The national planning framework provides an opportunity to send powerful signals about the geography of investment, where we should be investing in our roads and transportation systems and our water and sewerage systems, and where there should be major investment in schools or other community facilities. The framework adds geography to investment proposals, and on the back of that it sends clear signals to the development industry about where public investment will be given and will suggest that that is where they should look to bring out their development proposals. Equally, there are places where it is less likely that developers will get support for certain development proposals.

We look to the national planning framework to be the tool for sending clear signals about investment priorities and delivery. My view is that testing the robustness of the framework is a matter for politicians. I see the national planning framework as being the settled will of the Scottish Parliament in terms of public investment, and the development industry's job as being to get on and deliver the supporting private investment.

Patrick Harvie: I would like to ask another question, to expand on those issues. Other members of the panel are welcome to comment.

Richard Slipper mentioned "healthy debate" and Allan Lundmark mentioned "robustness" and "the settled will of … Parliament". The process, as it seems to be laid out, is that there will be a consultative draft, then the final draft will be laid before Parliament and we will have 40 days to go through whatever process we choose. Ministers must then have regard to our views and will sign off the framework. Given that we may be talking about some major and potentially controversial developments, and given that the thrust of the bill is about trying to get people on board with ideas early on, how can we improve the process of signing off that document?

Colin Graham: The proposed 40-day period is nowhere near long enough for Parliament to assess the NPF fully. The development industry would like certainty that once the NPF has been finalised it will be delivered. That means front loading as much of the consultation as possible. We do not want to skimp on the consultation,

discussion and assessment as the NPF is prepared, only to find that we have problems further down the line in delivering major schemes. I would endorse as wide and as long a consultation process as will be necessary to ensure that what goes into the NPF is not delayed when we get to the point of planning applications.

Michael Levack: My understanding is that the intention is to publish the second NPF in 2008. When I read the proposals, my concern was that it is stated that there will be more emphasis on implementation in the second NPF than in the first one but, equally, there are notes regarding extensive consultation. My concern would be how we can accommodate both. The timescale may be unrealistic to have the second NPF published on time. I do not know whether it has already been prepared as we speak, but bearing in mind some of the tough decisions and consultation that will be required, I would hope that it has been started.

Patrick Harvie: One would hope that somebody is thinking about it at some level.

Several witnesses have suggested or, let us say, have been open to the suggestion that many people would want a more formal process than just another Scottish Executive consultation—some kind of examination in public, as is used for spatial plans in other parts of the UK. Is that something that the development industry would be up for?

Richard Slipper: What is possibly important is the preliminary and the peripheral discussion of the document if it is in draft for many months beforehand. We are all aware that many planning applications end up being decided on in a 20-minute planning committee meeting, which is often healthy and well-informed debate because the matter might have run for two years on its route to that point. I am not as familiar with the parliamentary process as committee members are, but there may be scope for a much more thorough pre-process as an NPF works its way to the final parliamentary debate. In local government, there is quite often a pre-briefing and pre-discussion. It may be that this committee has a function in that. An examination in public is effectively what a robust parliamentary discussion might give the NPF. I would probably be against that kind of more inquisitorial formal forum for that document.

Allan Lundmark: I have some difficulty with the notion that Parliament should arrive at a conclusion that should be subject to an inquiry before—

Patrick Harvie: It could be the other way round.

Allan Lundmark: I would feel much more comfortable about that. If the nature of the way in which the Parliament considers, examines and takes evidence on the NPF leads it down a similar path to an EIP, then fine. I am extremely nervous about trying to give advice on the relationship between Parliament and the Executive in respect of how the NPF is dealt with. We expect the process to be transparent and rigorous, because we expect the NPF to send clear messages and to provide the certainty that Colin Graham was talking about.

The other issue in determining what process Parliament goes through is to ensure that the NPF is delivered on time and does not suffer from the problems that we have suffered from with development plans in the past, in which they are constantly under review and we never get closure. There is a challenge to get the NPF set-up settled and published and for the rest of the development plan system to follow it. It should not go into a system that does not have a recognisable closure date and it should be up to date and relevant.

Hugh Crawford: It is always helpful to see the big picture. I see the big picture as being the NPF, within which we should not find a break between the development plan system and what might suddenly happen in European legislation. It is also important that we define and flag up our priorities, particularly on issues such as sustainability.

I have a difficulty with the idea that the best way to explore and draw out the national topics is through a public examination. A good consultation process can take place with the main sectoral interests, some of which are represented today. A consultation process or even a seminar can draw out the issues, interests and concerns. A public examination would highlight certain major topics and would become such an unwieldy process that one would never be sure what had been distilled out of it. Normal consultation is helpful—it should be brisk, but not so brisk that organisations have no time to respond.

I sit on the steering group for the review of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, for which we are working to a brisk programme. I hope that, as we go through the consultation process, we are getting all the comment that we should be getting. However, because of the rigorous programme, we cannot hang about—we just have to get on and do it.

10:00

Colin Graham: I differ from some of my colleagues in that I would welcome an examination of the spatial elements of the NPF in advance of its adoption by the Parliament and ministers. I do not want the NPF to set out certain investment priorities only to find out, further down the line, as the planning process goes forward and

we get into the detail of the infrastructure projects, that the priorities are not acceptable or deliverable. We should sort out as much of the detail at the front end to avoid uncertainty at the back end.

Patrick Harvie: That is useful. I will roll together a few final questions so that we can move on. Do any of the witnesses have further views on the type of developments that ought to be specified as national in the NPF? What is the development industry's role in delivering and implementing the NPF? Do you have any views on the role of agencies such as Scottish Water in delivering the content of the NPF?

Michael Levack: I will avoid the final question, otherwise we might be here for some time.

Patrick Harvie: How disappointing.

Michael Levack: As a non-planner, I have a problem with trying to understand the categories. Some developments will be viewed as being of national importance, but clearly any development will affect first and foremost local people and businesses. There is no clear definition of the term "national importance". The Executive talks about transport projects, and I can see that if the M8 did not exist or needed to be upgraded, such a development could be of national importance. However, it would affect many communities. Therefore, I am still struggling to understand the classification "national development".

Allan Lundmark: The NPF should be about how the Scottish Executive sees Scotland's geography developing and, I expect, will send clear messages about where the Scottish Executive will put the infrastructure investment that it controls. Public bodies should be required to deliver against the geography of the national planning framework. The private sector's task is to use that to produce its development proposals. I envisage that the NPF will lay out the public sector investment priorities, or those elements of infrastructure that will be heavily influenced by public sector expenditure.

Richard Slipper: On categories of development, it is likely that road, rail and bridge infrastructure, airports and major rail stations will be the national priorities. A discussion is already taking place, in relation to the key transport hubs, about transport-related higher density development areas. That could be a very helpful national lead.

Another category is natural resource exploitation—the committee will hear later about renewables. Another topic heading would be significant geographical shifts in the emphasis of development. City regions are the basis of the new strategic development plans. The national planning framework might give an initial steer on the challenge for city regions to plan their growth and that might link in to green-belt reviews. It might be relevant to national planning to mention the capital city's growth if there is to be a significant shift in or review of its development pattern and also to mention development in Glasgow and perhaps the other cities.

I do not want to pick on individual consultees, but some of them are very important for the provision of water or other infrastructure. The debate is already running—raging even—perhaps not with them and possibly against them, but my reading of the situation is that the issue has been flagged sufficiently. Further action is required. The legislation and supplementary guidance must make consultees commit themselves to what they can provide in a geographical area by a given date. If such action is not enough, the Executive and Parliament will hear about that from local communities or development interests and perhaps more resources will have to be committed. Prevarication, lack of certainty and long delays in infrastructure development are hopeless in meeting the planning system's aim of delivering development.

Hugh Crawford: The national planning framework provides an opportunity to examine the overall economy of Scotland. It is not a big country, but nevertheless there are some great peaks and troughs. The national planning framework offers an opportunity to get support and infrastructure into economically deprived areas. That is one of the great benefits of having a national strategy.

Michael Levack: May I quickly return to my earlier point?

The Convener: Provided that you have an additional point.

Michael Levack: Yes. The document suggests that a second national planning framework will be published in 2008, but nobody seems clear about whether work on it has commenced. I wonder whether a specific comment could be made in the document that is due for publication in 2008 about issues of national importance such as a further crossing on the Forth—it will perhaps be a little soon to make a specific comment.

Patrick Harvie: You can trust us to put that point to the minister.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I will move on to development plans. I thank the panel members for their written submissions, which will be very useful to the committee. What impact might the development plan proposals in the bill have on developments in Scotland?

Richard Slipper: Our consultancy's response to that is short and sweet: we welcome the proposals. We are involved across the border.

Given the morass—shall I say—of different documents elsewhere, the public and even consultants in England and Wales have great difficulties in understanding what is being proposed.

We welcome the naming of SDPs and local development plans, as they feature the word "development". The updating of the plans every five years is also welcome, but we suggest that the legislation could add a bit more bite. What if a plan is just over five years old? What will the legislation require to be done if a plan is not updated? Will the Scottish Executive mobilise a special preparation force, using consultants or its own in-house resources? Will there be resource penalties for the local authority? Could there be ring-fenced moneys that come straight from the Executive for the purpose of plan preparation, which would have to be refunded if they are not used effectively? Forgive me for asking questions in response to a question. My message is that there is much in the bill to recommend it, but we should get on with it. We should move forward with the legislation but redouble the efforts on the support mechanisms and have a better debate about how to sharpen production of the documents.

Colin Graham: You would perhaps expect me to say that developers would quite enjoy a system in which development plans were not kept up to date, as that would give us a greater chance of doing developments that are contrary to the plans. However, we come back to the point about certainty and investment. We welcome the proposal to have a development plan system that is kept up to date, is regularly reviewed and is consistent across Scotland. One can see an on-going change in how developers are approaching major sites. There is a greater focus on development plans than there has ever been because, across Scotland, development plans are more up to date than they have ever been.

The simplification of the system is welcomed, as is the removal of large sections of detailed policy into supplementary planning guidance. Anything that makes things simpler for us developers to understand is always gratefully received.

There is a great need to keep the plans up to date and to review them regularly. From our perspective, the five-year review period for local development plans is perhaps too long given the way in which the economy changes. A three-year review period might be more suitable, although I do not know whether that would be deliverable in practice. However, we would welcome the introduction of stricter penalties for local authorities that do not keep the plans up to date.

Hugh Crawford: I am concerned about the gulf between the development plan system and the aspirations in the bill, given the number of plans that are well out of date. There will need to be a tremendous change in the level of resources if we are to be able to achieve those aspirations.

It will be quite difficult to keep the plans up to date. Reviewing them every three years would be a tremendous challenge. Doing so every five years would be ideal but, unless there is a substantial increase in the resources that are available, I do not see how local authorities will achieve that. In the notes that I have submitted, I express scepticism but do not suggest that the aspiration is not achievable.

Allan Lundmark: If you talk to some of my senior colleagues in the industry who remember the introduction of the plan-led system, they will tell you that, when they supported that, they never considered the concept of plans being out of date. If you have a plan-led system, it is fundamentally important that plans be kept up to date. The committee needs to ask whether the proposals will encourage authorities to keep them up to date. In our written submission, we say that the wording of the bill could be tightened up in that regard. We have presented a worst-case scenario in which, under the current wording, some plans might not be produced until 2011. That would hardly seem to be a smart, successful system for producing up-to-date plans.

Some of the wording that we have suggested in relation to action plans might be incorporated into the requirements on the preparation of development plans. It is not sufficient for the bill to say that development plans will be reviewed every five years—people could start a review process and never finish it. The plan needs to be reviewed, updated and published every five years.

We need to consider the incentives. We have spoken about sanctions but there could also be incentives to keep the plans up to date. We have suggested that, if a plan is out of date, there should be a presumption in favour of planning permission—deemed consent, in other words. I rather suspect that the threat of that might be sufficient to make planning authorities ensure that their plans are not out of date. We would welcome that, although I would expect that such a sanction would never be used.

We have drawn attention to the use of supplementary planning guidance. We welcome streamlined plans and supplementary planning guidance. It is important that such guidance is in place to provide additional assistance in relation to a policy matter that is already driven into the local plan. That will give developers and the community confidence in the planning system. They should be aware of what the plan is about and when it is being altered.

In our view, it would be entirely inappropriate to use supplementary planning guidance to alter the local plan or to deal with a matter that is not covered in the local plan. The main reason for that is that the system that will be put in place to approve supplementary planning guidance is nowhere near as rigorous as the system for approving a development plan. A local community that had engaged in the development plan process could discover that a major piece of policy—of which it was not aware—had been driven into the system by another process.

In our written submission we suggest that, if the Executive opts for a system of supplementary planning guidance, the system for testing that guidance will need to be every bit as rigorous as the system for testing the development plan. Under the proposals in the bill, that is not the case. The committee must satisfy itself on that point. If that is a legitimate use of supplementary planning guidance, will it be tested to such an extent that not only developers but the communities that will be affected will have confidence that they have had an opportunity to influence it?

10:15

Cathie Craigie: I am sure that the committee will pursue those points. I take it that there is general support for the bill's proposals on development plans. In your written submissions and in your evidence this morning, you suggest that there should be penalties if the local authority does not achieve the goal of keeping the plan up to date every five years. Do you have any suggestions about what those penalties should be? Should they be included in the bill?

Colin Graham: As my colleague Allan Lundmark suggested, the threat of having deemed planning permission granted for developments when the development plan is out of date would be welcomed by the development industry, although I question whether that is tenable on a day-to-day basis. If local authorities are to pay attention to the need to review development plans regularly, a robust system of penalties must be in place. If there are financial penalties or if a local or strategic development plan team is imposed on the local authority, I would have no issue with that.

Cathie Craigie: Deemed consent is not something that I want to support or encourage. I am looking for other suggestions, if you have any. The matter has been raised with me before.

Hugh Crawford: If a development plan was not going to be updated within a few months as part of its five-year review, a hearing could be established to determine what needed to be done and how long that would take. That mechanism could be used to bottom out the reasons why the plan was not being updated. The matter could be flagged up, say, two or three months before the due date and measures could be put in place so that the resources were seen to be in place to achieve the target.

Richard Slipper: I reiterate what I said earlier. First, if it were stated in statute that the plans had to be prepared, that would perhaps be stronger. I am not giving legal evidence, but that might mean that groups that were concerned that not enough energy was going into the preparation of a plan could take action under the bill and state that the planning authority had abdicated its responsibility. Incidentally, that might connect onwards to consultees who had not assisted in the process of the plan.

I hesitate to say that the answer is legal challenge but, in planning, non-performance and errors in process are often challenged by law. That is expensive and could be embarrassing for authorities. I mentioned before that there may be a time-bound focus on the preparation based on moneys received for that particular task and their refund back from the authority. Again, if there has been underperformance, that is an awkward issue for local authorities to discuss at their cabinet level. A strategic development plan team could mobilise further resources to assist local authorities and speed up the preparation of plans.

That said, it is important to be realistic about whether a plan will ever appear to be fully up to date. The issues are more to do with ensuring that the process, the activities of the people who are involved and the monitoring, discussions, debates and onward consultations are up to date. People in our industry are familiar with business plans and development appraisals. The words of those plans and appraisals on paper are probably never completely up to date, but activities in pursuance of a plan's objectives should be up to date, perhaps as a result of weekly or monthly reviews. Moving towards a culture in which development plan teams in local authorities review and react to changes in the development industry more rapidly is not a matter for statute, but it is certainly a best-practice matter and a matter for circular guidance.

Cathie Craigie: I want to move on. It is important to ensure that the infrastructure exists to allow plans' objectives to be met. Would placing a statutory duty on key agencies to engage in the whole development plan process be of benefit?

Colin Graham: Absolutely. There is absolutely no doubt that those bodies must be involved in the process and that they must be made to deliver so that the private sector can deliver its side of the bargain. Everyone round the table is probably aware that there are significant problems in the system at the moment. Proposals in development plans cannot be delivered because of the lack of

infrastructure, over which bodies other than the local authorities and developers have control. We would heartily welcome a statutory duty on those bodies to co-operate and deliver in the process.

Allan Lundmark: I support what has been said. There is little point in having development proposals in development plans if infrastructure providers say at a later date, "We can't deliver the investment." Providers must be involved when the plan is being put together.

Richard Slipper: I agree. The specific naming of important agencies and saying what level of performance is expected of them in the process are to be welcomed.

The Convener: Mr Harvie, do you have a question on sustainable development?

Patrick Harvie: We have probably covered the issues that I wanted to raise.

Scott Barrie (Dunfermline West) (Lab): I want to turn briefly to the hierarchy of developments that the bill proposes. I was interested in Mr Graham's response to a question that the convener asked at the start of the meeting. He said that some developers have "played" the current system. I wonder whether developers will be tempted to play the proposed system and adapt the size of their development to benefit from what they think are the most favourable conditions under the hierarchy of developments.

Colin Graham: The harsh reality is that people will try to play any system, but that is not a sustainable approach for developers with long-term strategies. If people regularly try to play a system, they will be seen to be doing so and the local authorities will pick up on that or the legislation will be amended accordingly to stop them doing so. A process of trial and error is involved. Limits must be set throughout the country when things such as affordable housing thresholds are being considered—we cannot get away from that—and people will always try to manipulate systems to fall above or below limits, depending on their aims. I do not see an easy way round that. We must proceed, monitor and, if necessary, review the legislation accordingly.

Allan Lundmark: When the bill was published, we were concerned that it did not define major housing developments. We welcomed the clarification that the chief planner provided when he appeared before the committee—it was suggested that a major development would perhaps be defined as consisting of 300 residential units. We have examined the suggestion and believe that the definition is probably right.

As for how a developer might respond to that, I tend towards the view that, if one of my member companies had a development that was marginally under the size limit, it would try to increase its size to get it over the limit. Making it a major development would get the company a processing agreement and would provide certainty about how things would progress through the planning system. I would not envisage people trying to avoid developments becoming major developments. If a development was right on the margin, there would be advantages in arguing for a proposal to be considered as a major development, as that would provide a measure of certainty with regard to timescales. That might be manipulating, but it is not necessarily manipulating a project for wrong or negative reasons.

Richard Slipper: I agree with that. The right way to view the hierarchy is to see a major development as a development of major importance to an urban area. It is a development that would be a major focus of attention for the council's resources. It would probably be a major commitment for the developer's purse.

On the requirement for fees to be adjusted, a number of my developer clients are saying that, if they knew that that would guarantee a different, faster tracked and better resourced process, they would be happy for a development to be a major development. If developers are playing the system, engaging in public consultation at the first post and putting a huge amount of resource into good consultation to get a good result, they will get an allocation and a plan. If they get their allocation and plan, it should be smooth riding after that to get permission approved.

My view is that the process of approving the permission aims to improve the scheme, so that the design outcome, the master plan, the quality of the development and its sustainability credentials can win through. Playing the system should mean winning the prize of having an award-winning development that is applauded by all. That starts right at the beginning, from engaging the first party—the public—and the developer respecting that interchange. The developer then takes from that the winning schemes that have come through the system.

Hugh Crawford: If broad thresholds were established for what would or would not be a major development and, within that, the council, for example, could interpret that to mean that although a development might be regarded as a major development for a number of given reasons, it still fell below the threshold, that would allow a measure of flexibility.

Patrick Harvie: I think that the flexibility that is on offer at the moment is in the hands of ministers. Allan Lundmark was saying that some developers might choose to squeeze in a few extra units so that a project would be treated as a major

development. Is that not a case for saying that we should not have a single, absolutist, quantitative threshold? Given the importance, impact and complexity of some developments, which Mr Slipper was talking about, and the amount of time that a local authority will have to spend, should we not be considering a more subjective threshold, rather than simply using a number?

Michael Levack: The only problem with that is that it makes for even less consistency across Scotland in local authorities' ability to form effective opinions about whether or not a development is a major development.

Patrick Harvie: But is consistency across Scotland the most important factor? Should not each development be treated on its own terms?

Michael Levack: It is perhaps not the most important factor, but it is important to have a degree of consistency. The hierarchy is sensible. Over time, it will probably become absolutely clear what will fall into each category.

Patrick Harvie: Is a single, numerical threshold the only way to achieve some consistency?

Michael Levack: No, but it does allow for some clarity.

Richard Slipper: This discussion will inevitably link back to that on the levying of fees on developments, which then links back to the resources that are committed to the processing of developments. Major developments might only ever occur in the major urban areas, where a higher quantitative threshold will be reached. That is not to say that another development in a smaller town will not be of such significance that the director of planning will suggest that a pre-application processing agreement and a special form of pre-application consultation are relevant. There has to be discretion. In all the studies of national relevance that we have done, we have had to respect the fact that there are not only major urban issues but equally important rural town issues. They are never of the same size, but they could be of great relative importance locally.

10:30

Colin Graham: There is perhaps a halfway house. I give the example of the way in which the Environmental Impact Assessment (Scotland) Regulations 1999 work. Schedule 1 to the regulations lists projects that, without question, require environmental impact assessment. Schedule 2 lists developments for which an assessment is discretionary. It combines certain numerical thresholds, such as sites of 5 acres, for example—I cannot remember the exact figures—certain uses and a catch-all that covers any developments that are likely to introduce significant change into an area. Perhaps that indicates a way of giving the development industry some certainty about whether a project is likely to be considered as a major development.

Allan Lundmark: The main driver for this aspect of the bill is how resources are deployed in planning departments. It is about ensuring that they are deployed most effectively and not squandered on matters that are fairly straightforward to deal with.

When we put thresholds into any system, they distort the system's operation and it is difficult to be precise. I suggested to Mr Barrie that, if I had a development of 290 houses, I might try to get it up to 300. Another approach might be to agree in a discussion with the planning authority that the proposal for 290 houses was sensitive to the point that it would benefit from a major application processing agreement. If we knew that we could have that discussion and that the planning authority might agree that such a development should be treated as being above the threshold because that provides a more effective way of dealing with the application, the development industry would not resist that. If we know up front what is required of us, that is what we will do.

I endorse Richard Slipper's earlier point about developers now being expected to do certain things in relation to community engagement and to mitigate the impact of developments on the community—as opposed to following only the planning authority's determination of mitigation—to make their planning applications more robust. That sends clear signals to developers. If the system said up front to the developer that there was a way of processing an application more effectively and with greater certainty, most developers would take part in those discussions and come to such an agreement.

Mr John Home Robertson (East Lothian) (Lab): You have already touched on supplementary guidance. Proposed new section 22 of the Town and Country Planning (Scotland) Act 1997 provides for strategic development planning authorities to issue supplementary guidance on the implementation of strategic development plans and for local authorities to issue supplementary guidance on local development plans. Homes for Scotland has expressed anxiety that that section could provide an inappropriate mechanism for extending or amending local development plans. Why would it be inappropriate? Surely elected local authorities should be free to react to circumstances that might arise in their areas, subject to appropriate scrutiny and accountability. Do you not accept that?

Allan Lundmark: It might be more appropriate to deal with new policy areas and new policy issues as alterations to the development plan

rather than through supplementary planning guidance. It is important—not only to us, but to the community, which will experience the impact—that such policy initiatives are subjected to the same level of scrutiny and testing as are alterations to the development plan. It would not be appropriate to use a less rigorous mechanism.

It is entirely appropriate to use supplementary planning guidance to give further guidance on a matter that has already been driven into the development plan, because the main policy issues will already have been established and tested. The supplementary guidance simply guides the applicant for planning permission and the community in responding to the proposal. The point is that the process must be rigorous. We would have no reservations if the committee was minded to amend the proposals on supplementary planning guidance to ensure that if it deals with matters that are not covered in the development plan, it is subjected to the same tests to which the plan itself is subjected.

Mr Home Robertson: This seems to be a case of sledgehammers and nuts. It might well be perfectly appropriate to provide supplementary planning guidance in certain situations. For example, one bee in my bonnet is the fact that some big developers—mentioning no names—are building houses in every town in the UK using identical off-the-shelf designs. Some people might say that the situation has depressing parallels with the identical blocks of flats that can be seen all over eastern Europe and the former Soviet empire. Is there not a strong case for giving local planning authorities the power to issue supplementary guidance to ensure that local materials and styles are reflected in developments in their local areas?

Allan Lundmark: The planning authority in your area is doing precisely that by, for example, consulting on supplementary planning guidance for home zone design. That is entirely appropriate, because the development plan already contains statements on design, and this is merely further guidance about what is required of developers.

Mr Home Robertson: So that is fine.

Allan Lundmark: Absolutely. I have no difficulty with that. After all, the approach to design has already been driven into the development plan and tested. The proposed process is out for consultation and will be perfectly legitimate, as long as the planning authority takes into account all the suggestions that are made and publishes its reasons for either accepting or rejecting them.

Problems arise when supplementary planning guidance is used to deal with a matter that is not covered in the development plan. For example, in most pressured housing areas in Scotland, one of the most sensitive issues is the provision of affordable housing. In fact, it is so important that the development plan should make the policy position clear, and supplementary planning guidance should assist in the policy's delivery. However, in certain cases, the policy has been driven in by supplementary planning guidance, and few people have been involved in making the policy position more robust. We need to consider the level of testing that is carried out. Driving an affordable housing policy into the development plan makes the policy more rigorous than simply setting it out in supplementary planning guidance. Such an approach gives certainty not only to the industry but to the community, as it engages people in the process.

Mr Home Robertson: I have a notion that you are protesting too much. In the major example that you cited, a need for affordable housing might be identified, but developers might find a way of sidestepping the planning authority's intention in that respect. In such a situation, is it not perfectly legitimate for the local planning authority to supplement guidance and the local plan to deliver an objective that everyone agrees on?

Allan Lundmark: All I can do is point you to known examples. The City of Edinburgh Council delivered its supplementary planning guidance on affordable housing by driving in an alteration to the north-east Edinburgh local plan, which was then tested at a public inquiry. As a result, its policy position is far more robust than that of authorities that have simply relied on stand-alone supplementary planning guidance that has not been tested, and the housebuilding industry is far more comfortable with it. After all, relying on supplementary planning guidance alone raises questions about the robustness of the policy when applied to planning applications. Because such guidance has not been tested and is not robust, developers are more likely to seek to appeal decisions, as they cannot be certain of the extent to which the guidance was driven by evidence-based policy.

Richard Slipper: A broader view is that different kinds of supplementary planning guidance exist. The first kind is area SPG, which concerns geographic areas that need to be moved on beyond local plans. I fully endorse the continued use of area SPG, because it is more agile, more thorough and better partnered. A typology in the Executive document "Designing Places—A Policy Statement for Scotland" suggests that that can be achieved through frameworks, briefs, master plans and design guides. We are keen to engage with the Executive's Development Department to develop that discussion. We have had successes in major urban areas in taking forward supplementary policy to implement development.

The second kind of guidance is topic SPG, which we are discussing. It involves topics that marble development plan areas. Supporting circular guidance makes it clear that it should supplement, not supplant, overall policy. Mr Lundmark was right: if there is too much patchwork stealth policy by SPG in the future, following the bill's enactment objectors and respondents will start to say that it might not be lawful and that the development plan should deal with the main prevailing topics. It might be clear in the future that devoting energy to keeping the development plan process going is the right route to achieve up-to-date plans. If major citywide or area-wide policies are being debated in making supplementary policy, it is time to update the development plan—an authority need not wait for the five-year anniversary. A topic in a plan might need to be amended after two years. That would allow it to be examined properly and tested robustly.

The Convener: I am conscious that our witnesses have been with us for more than an hour and that we have several subjects still to cover, so I would be grateful if committee members kept their questions short and if panel members kept their answers as succinct as possible, without missing out anything that they want to impart to us.

Mary Scanlon (Highlands and Islands) (Con): I notice that Homes for Scotland is very much against supplementary planning guidance, but that architects say it is very helpful. The submission from one of our witnesses later this morning—the Scottish Renewables Forum—says:

"supplementary planning guidance could be actively used by local authorities to act against provisions and policies of national planning policy guidance."

The submissions show quite a variation in views.

I will not ask you to repeat anything that you said to John Home Robertson, but do you agree with the Scottish Renewables Forum that SPG almost sets local authorities on a collision course? It is almost a way to sneak in through the back door guidance that is contrary to national planning policy guidance. We certainly do not hope to provide for that under the bill.

Michael Levack: The objective is to make the whole system efficient and clearer. As development plans are to be updated every five years, the amount of supplementary guidance that is required should be limited.

Mary Scanlon: Proposed new section 22(2) of the 1997 act says that a strategic development planning authority may make regulations on procedures, consultation and various other matters, so it is not only about design and local materials. It is worrying that local authorities could each make different regulations on procedures, consultation and other matters that should be nationally guided or should be in development plans, as has been said. Is that proposal for the planning system confusing?

Hugh Crawford: It is important to have consistency all the way down from the national planning framework, which will contain statements that give broad guidance on how matters should be dealt with. I adhere to the architects' view that supplementary planning guidance is good, because at the level at which architects work as agents it provides clear and concise guidance and a robust standard within which architects can make and defend a proposal. It is also important that it gives an element of flexibility from area to area. We have seen that emerging in the various design guides for different regions. That is useful, so giving it a statutory basis would be helpful.

10:45

Mary Scanlon: So you do not agree with the Scottish Renewables Forum that supplementary planning guidance could act against national planning policy guidelines.

Hugh Crawford: I think not. We have national planning policy guidelines and planning advice notes, all of which should ensure consistency.

Colin Graham: The easy way to deal with that situation is for the legislation to say that any SPG must adhere to national planning guidance. Many authorities have adopted that principle.

Mary Scanlon: That is a reasonable suggestion. Thank you.

I have a final point on supplementary guidance. Homes for Scotland's submission mentions proposed new section 22(6), which states that guidance must be submitted to ministers for a period of 28 days. What do you understand will happen in that 28 days?

Allan Lundmark: I have no idea.

Mary Scanlon: That answer was helpful. We will try to get that information from the minister.

I will move on to ask about pre-application consultations. I note that the RIAS says that they will be welcome, but many of the other panellists did not address them in their submissions.

The Convener: Mrs Scanlon, will you ask your question rather than allude to what is in the written submissions?

Mary Scanlon: What impact will pre-application consultations have on the way in which applications are prepared? Will such consultations reduce the number of objections in the process?

Richard Slipper: Yes. They will endorse a much more efficient process and much more productive forms of consent will emerge from them.

Colin Graham: Developers sometimes feel that their hands are tied by the current regulations on issues such as neighbour notification, which effectively oblige us to send the minimum amount of information to consultees. I would rather send much more. The current proposal for pre-application consultations is having what I hope is a positive effect on the development industry. A number of developers are already taking up the cudgel of pre-application consultations because they know that they are coming in; they are trying to adapt to the system now. If we can engage in such consultations with the community in advance of applications being made, I hope that they will have a smoother ride when they hit the desks of the planning authorities.

Mary Scanlon: So rather than delaying the process, the pre-application consultation will be helpful to the long-term process.

Colin Graham: Yes. Members of the public frequently criticise us for the fact that they have only 14 or 21 days to respond. That is what is laid out in the legislation, but most local authorities will accept objections until an application is determined. However, that is the public's perception.

Allan Lundmark: Our industry welcomes the proposals. We are working actively with our member companies on how to progress pre-application discussion and community consultation. We have commissioned Planning Aid for Scotland to research the processes that might be put in place to assist that. The housebuilding industry will embrace the idea.

If we step back and think about it, the proposals are really saying that if a planning proposal has the community's support, the planning application will be more robust and the planning authority will be less likely to refuse it. That is a hugely powerful message to send out to the development industry, and we will certainly embrace it.

Mary Scanlon: Thank you.

Christine Grahame (South of Scotland) (SNP): I note that we have to be crisp and concise, so I will ask four short questions.

First, predetermination hearings will be held for certain developments. We do not know what kind of developments they will be, because that will be decided in regulations. What kind of development will require a predetermination hearing? Can you give me an example?

Secondly, my understanding is that it will be up to the planning authority to decide who will attend the hearings and the procedures that will be used. I have listened to what has been said about consistency, so I would like the panel to comment on that. Hearings that are held in Edinburgh might be very different from those that are held in East Lothian or the Borders.

Thirdly, what would be the financial impact on developers of predetermination hearings? Finally, what would the general impact be on planning applications?

Hugh Crawford: There is always precedence and these processes have been in use for some time. It would be good to have an opportunity for such a hearing. A contentious application would always be brought forward to such a hearing, at which particular arguments could be brought out. That would be welcome to ensure everybody's full understanding, particularly in the case of a large application into which many resources and inputs had gone.

Christine Grahame: What kind of development would be covered by the provision? I understood that a certain type of development—not necessarily those that are contentious—would require a predetermination hearing.

Hugh Crawford: I think that there is contention in every sort of development.

Christine Grahame: I understand that. Perhaps someone else can assist?

Richard Slipper: We are back to the hierarchy of developments. Major developments would probably qualify. I made the comment earlier that such developments may prevail only in urban areas, so directors of planning in local areas will have to have discretion to decide on which applications they suggest to the developer should have a hearing.

With regard to your other questions, it would help planning committees to have guidance on a consistent process. That need not be difficult—perhaps such guidance could be given nationally. If public inquiries can work with a particular approach, hearings could work in that way, too. More time for planning committees is needed in all local authorities. If a committee sits every eight weeks, that does not help the process. Members of planning committees are some of the busiest sets of people in the democratically elected part of a local authority and their importance needs to be recognised. Resources and frequency of meetings need to be increased so that telling decisions will be made at pre-application hearings every week.

There would be an impact on developers, because they would have to prepare for hearings and advocate their cases carefully. However, they are used to doing that. As deputations and presentations to planning committees are not

unusual, it might help to have more formality in the process. The impact on applications would, I hope, be a speedier outcome and better decisions.

Allan Lundmark: I endorse what Mr Slipper has said.

Colin Graham: In many local authorities in England, where we have major schemes, the hearing process is already part of the planning application process. We have no problems with it. Although developers are opening themselves up to objectors to their schemes, they also get a chance to put across their case. The financial implications to us are pretty minimal. We would welcome the opportunity to put our case to planning committees in person.

Michael Levack: The hearing would provide the opportunity for common ground to be agreed and areas of difference to be highlighted. It would also explain to communities and the wider public how developers are within their rights as contained in a development plan. Therefore, the more contentious items would be thrashed out and the process would become more efficient.

Christine Grahame: Could a plan also be modified by compromise?

Michael Levack: Yes. The process would be similar to the principle of operation in the court system, where a meeting is held prior to a hearing to thrash out and clarify the basic points that are to be discussed further.

Christine Grahame: There would be a joint minute.

Michael Levack: Yes.

Christine Grahame: I understand that the additional grounds for refusing to determine planning applications are all new, but that they come under a two-year timescale. It is proposed that if, within two years, a developer submits an application that is repetitious, that has already been rejected or that is much the same as an application from another developer, the planning authority can refuse it. Can you comment on that proposal?

Colin Graham: As developers, we have no problem with the principle behind that. It is the rarest of circumstances in which a major developer makes repeated applications of a similar vein on the same site. So long as there is an opportunity to go back with an amended scheme at least once, we would perfectly happy with the proposal.

Christine Grahame: That depends on what you mean by the word “amended”.

Colin Graham: Yes.

Hugh Crawford: Schemes should have an opportunity to evolve. Disappointment may follow the refusal of an initial application, but it is always worth while to consider the reasons for refusal—and whatever comment or criticism has been made—and to make positive use of them when amending the scheme before reapplying. I hope that the opportunity to do that will remain.

Richard Slipper: It is fair that repetitious or vexatious behaviour by developers should be discouraged; for balance, the same rules should apply to third parties or consultee parties. If a repetitious or perhaps belligerent pursuit of a scheme by a developer is to be discouraged, there should also be just one place and time for comments on the scheme before people have to accept the power of the decision-making authority. The same rules against vexatious behaviour should apply to all.

Christine Grahame: Can you foresee litigation?

Richard Slipper: Possibly.

Christine Grahame: As an ex-lawyer, I smell litigation.

Allan Lundmark: We have no reason to resist these particular proposals in the bill.

Scott Barrie: The proposed scheme of delegation will determine which applications are dealt with by officials and which are dealt with by councillors. Will that make the planning system more efficient or less efficient? What are your views on the proposed right of review?

Hugh Crawford: Overall, the planning system should work more effectively. However, bearing in mind all the energy, resources and aspirations that go into an application, a scheme of delegation could lead to concerns over whether the application was being given due consideration.

It is proposed that a local group will review decisions. That might be better done through the appointment of an independent mediator—perhaps someone from a neighbouring authority.

Colin Graham: We have no problem with the proposal for a scheme of delegation; many local authorities operate such schemes quite successfully and we have no particular objection in principle to the idea being extended.

I have a great deal of concern about the idea of what I might term a peer review of planning officers’ decisions by local members in the same planning authority, because I cannot see that the final review of the decisions will be entirely independent and impartial. In any local authority, planning officers and elected members tend to have a decent relationship. I would therefore far rather that any review of decisions was taken by an independent party.

Richard Slipper: On smaller developments in the right categories, it is good to give planning

officers more power. Within planning departments, there is the malaise of a lack of self-respect because their decision-making powers are not strong enough and not respected enough. All fully qualified planners, from the highest director downwards, should feel proud of their decisions. However, individual applicants should also be able to appeal, as it were, to elected members.

Giving planning officers more power can only speed up the process for the right kind of applications. Doing so will engage qualified planners more effectively in their work.

Allan Lundmark: It is unlikely that the proposals will impact on my member companies, except in so far as they free resources that can then be used to deal with major applications. To that extent, we were content with the proposals and therefore made no comment in our written submission.

However, speaking not as a representative of the housebuilding industry but just as a professional planner, I share Mr Graham's concerns about peer reviews. The whole review process needs a lot more scrutiny.

Scott Barrie: I hear what you are all saying and it will be interesting to reflect on it. A cornerstone of local democracy is that elected members should know their area. I can see a pertinent role for them that people from a neighbouring authority might not be able to play. The committee might want to reflect on that.

Christine Grahame: Scottish ministers will decide on the method of appeal. Do you agree that they should do that? In its evidence, the Faculty of Advocates was concerned about restrictions on public inquiries—and I heard what you said about the public having to have faith in the planning process.

The proposed restrictions on the new information that can be introduced at appeal are pretty tight and would permit the raising only of matters that

"could not have been raised before that time",

or that had not been raised earlier as

"a consequence of exceptional circumstances."

The Faculty of Advocates suggested that the proposal might lead to situations in which two parallel processes were going on. An applicant might lodge an appeal and make a fresh application that used material that was disallowed for the purposes of the appeal. Do you agree that that would not be efficient?

What is your view on the proposal to reduce the time limit for lodging an appeal from six months to three months? I understand that that approach caused problems in England.

11:00

Richard Slipper: I defer to the evidence from the Faculty of Advocates on procedures for a fair hearing. The faculty's evidence provided the right level of detail and I do not depart from it. More scrutiny in relation to the form of inquiry would be useful, so the faculty's evidence is worthy of further discussion.

The restriction of information can be a problem if the inquiry reporter is led to a moving target. We have talked about how the new system should embrace alternative options and discussion, so inquiries should not need to consider different options. However, perhaps relevant new circumstances should be admitted as further evidence.

The proposed reduction in the time limit for appeals from six months to three months has the appearance of tightening and speeding up the planning process. However, the party with the most interest in speeding matters up is likely to be the appellant and appellants who wait until the sixth month before they appeal create the delay. In the audit of the system's performance, the important matter is what happens after the appeal is lodged. A six-month time limit might allow my colleagues who make board-level decisions a bit more time to consider the risk that is involved in an appeal.

Colin Graham: I have no concerns about a reduction in the time limit for appeals in principle, but the Scottish Executive inquiry reporters unit must be properly resourced to deal with appeals. The reduction in the time limit in England and Wales led to a logjam and, in effect, to the system's collapse. When we learn of a planning decision we know fairly soon whether we will appeal.

Allan Lundmark: The purpose of the appeal should be to test the robustness of the planning authority's decision. Therefore it seems appropriate that the appeals process should create an alternative planning authority that can test the original decision. I read the Faculty of Advocate's submission and I would not dream of making further comments on the matter.

We resisted the proposal to reduce the time limit for appeals for practical reasons, because when such a measure was introduced south of the border the system almost collapsed under the weight of appeals. People ensured that they lodged an appeal early in case they missed the opportunity to do so later. A six-month time limit allows people to reflect a little on whether to appeal.

Christine Grahame: Would people submit an appeal just to protect their position?

Allan Lundmark: There is a risk that that might happen if the time limit were reduced to three months. The evidence from south of the border supports that view, but I do not have strong views on the matter.

Cathie Craigie: Do you have concerns about the reduction in the standard duration of planning permission from five years to three years? There was quite a difference between the Homes for Scotland submission and the submission from the Royal Incorporation of Architects in Scotland. Allan Lundmark seems quite exercised by the matter.

Allan Lundmark: There is evidence that it can take our member companies more than a year—sometimes much longer—to remove suspensive conditions, because the process can depend entirely on the actions of other public agencies. For example, the removal of a suspensive condition that relates to water and drainage is entirely dependent on a Scottish Water investment programme.

If that window is pushed out, such that the removal of suspensive conditions takes nearer two years, that leaves only a year on the planning consent in which to implement the proposal. To us, that period seems to be far too short. There is a risk that the developer might not be confident that they could purify the conditions in time. In our view, that would increase funders' uncertainty. If suspensive conditions could not be removed in time because of the actions of third parties, funders would become nervous. That is why we are concerned.

Our worries are compounded by the proposals from the Treasury, the Office of the Deputy Prime Minister and HM Revenue and Customs on a planning gain supplement. As they are drafted, the proposals will mean that some of the infrastructural deficits will be removed by the recycling of hypothecated revenues. To put that in plain language, the taxes that are collected in London will be distributed to Edinburgh and then redistributed, so that either local authorities or other public bodies can put in the infrastructure and remove the suspensive conditions. We do not believe that it would necessarily be possible to do that within two years; it could take nearer three years. The uncertainty about matters over which we have very little control leads us to believe that, in effect, the bill might reduce the duration of planning consents to 12 months.

Cathie Craigie: I am not sure whether other members of the committee are fully briefed on suspensive conditions. Perhaps we can follow that up at a later stage. Is there room for compromise?

Colin Graham: I have a point to add. The other side of the coin is that the present five-year duration of a consent has the effect of locking up capacity—whether that is retail capacity, drainage capacity or the capacity of the road network—until the consent expires. We have experienced situations in which a consent was granted but, for whatever reason, the developer could not deliver; he might not have been able to assemble the site, for example. As the alternative developer, we have had to sit around for five years until the consent expired because the capacity does not become available until that point. The reduction in the duration of planning consents to three years might be welcomed in cases in which there were competing schemes that could be delivered in practice.

Hugh Crawford: I think that I was identified as saying that a reduction in the duration of planning consents from five years to three years would be a good thing, but that may depend on the scale of the scheme. Our submission flagged up the fact that it may take time for an existing use on a site to work its way out.

While I listened to the discussion, it occurred to me that the bill might offer an opportunity to specify two lengths of planning consent: there could be a three-year period or a five-year period. Depending on the circumstances, a planning committee could be empowered to grant a consent for five years because of the complexities of the case, even though three years would be the usual period. Such an approach might be appropriate.

Mary Scanlon: Do you have any concerns about the proposed change from the granting of outline planning permission to the granting of planning permission in principle?

Richard Slipper: The response to that is, "What is in the change of a name?" There is a danger that outline planning permission might signify to communities simply that a red line was being drawn around a site, that no further material would be submitted and that a decision by the local authority was expected. As a planning consultant, my evidence is that that is hardly ever the case these days. It is much more likely that a developer will be asked to supplement their application with specific details. Increasingly, developers provide an outline of the principle of the development and, on top of that, selective details. We are starting to call such applications hybrid planning applications.

I recommend that there should be a great deal more discussion of what the bill finally says about the forms of planning application. My view is that there should be some kind of permission in principle, which would relate to the general land-use mix, the overall content of the scheme and other strategic elements of the scheme that the authority requested. It should be accepted that there are two categories of details—those that can be included with an application and those that must be reserved. There might still be

opportunities to leave out all detailed matters on some applications if it is important to move on the old-style outline planning permission. Language that talks more of the principle than the detail would be helpful, in major applications in particular.

Mary Scanlon: Are you content with the provisions in section 20 about planning permission in principle?

Richard Slipper: They are a start, but perhaps there has to be something more in statute. There is often a lot of confusion about what is a reserved matter and we might have to lose ourselves in the general development procedure order to find that out. It might be more helpful to write in statute how planning applications can be made.

Mary Scanlon: But you feel that the bill is a move in the right direction.

Richard Slipper: Yes, it is a start.

Allan Lundmark: I support what Mr Slipper said. It is important to bear in mind, particularly in the case of large housing projects, that local authorities seek to capture an uplift in value to fund supporting infrastructure through section 75 agreements.

One cannot work out what that increase in value will be and what supporting infrastructure will be required unless one has outline planning permission or planning permission in principle to allow one to go to the next phase. Without it, it would be difficult to promote major housing developments or to fund the infrastructure to support them.

Mary Scanlon: Thank you. You have just pre-empted my next question.

The Convener: I ask Mary Scanlon for her patience for a minute—Mr Robson has a question on this matter.

Euan Robson (Roxburgh and Berwickshire) (LD): My question is about housing density. In the current circumstances, density is stated at the stage of outline planning permission, but it can then be increased at the detailed stage. That causes considerable concern in communities, because what they thought was to be a 30, 40 or 50-home development can turn out to be a 70, 80 or 90-home development. Would you welcome the inclusion of parameters in planning permission in principle to restrict that problem?

Richard Slipper: My view is that it is reasonable and increasingly seen as the norm to outline the maximum expected number of dwellings at the outline—or, in the new language, principle—stage. Most of my clients are used to that being a director-of-planning request at the pre-application stage. From there, transport, environmental and other assessments can be made.

Devices to alter that density could well be open later, but perhaps that should not be reserved because the public might perceive that as being done by the back door. It might be a matter of planning permission in principle. It is probably important that Mr Lundmark adds to my comments.

Allan Lundmark: Euan Robson has touched on a critical element. In the past, the tendency has been to deal with such issues as reserved matters, but that causes problems with communities because they are not involved in the process. I spoke earlier about the thrust of the way in which we are expected to test a proposal before we bring it into the planning system. I simply endorse what Mr Slipper said—what is proposed is much more robust.

Mary Scanlon: I want to move to the amendments to section 75 of the Town and Country Planning (Scotland) Act 1997 and in particular to the planning gain supplement, which has been raised by directors of planning as a matter of some concern. I know that it is difficult for you to comment on the planning gain supplement because the consultation at Westminster will finish in the next couple of days. However, I am also aware that what has been proposed at Westminster will have a significant effect on the amendments to section 75.

Homes for Scotland raised concerns about this matter in its submission. What are your comments on the role of the planning gain supplement? Additionally, although this might be a legislative matter, how could the bill be passed in this Parliament without our quite knowing what is happening at Westminster? We will raise that question with the ministers, but it bothers me that that situation might confuse the situation and I would appreciate your comments.

Colin Graham: I think you will find that everybody here is heavily involved in the consultation process on the planning gain supplement, which has now finished. Let us leave to one side the principle of the matter, although Miller Developments and most of the commentators that I have heard objected to the principle of the planning gain supplement for a variety of reasons.

One of the details that concerns us is that a national tax would be imposed. The consultation paper talks about a compensatory amendment to section 106 agreements, which is fine for England, but is not particularly helpful for Scotland. We do not want to have a regime whereby a tax is imposed by Westminster, but the Scottish Parliament or various local authorities take a different view of how the section 75 contributions should be scaled back in Scotland. Our purely rational fear is that the money that is collected

nationally might not be returned in full—or in significant part—to Scotland. We in Scotland would not want to be hit by a double whammy through the imposition of a PGS and a lesser reduction in section 75 requirements. That is one of the fundamental issues that we have with the PGS as it is currently proposed.

11:15

Richard Slipper: On section 75 requirements, I recommend that the bill should state what the reasonableness test is. There is plenty of planning law and examples of cases over the past 20 years. The contributions, which are not planning gains but fair contributions, in which a developer has to contribute to something that otherwise would cause refusal, should be fairly and reasonably related in scale and kind to the development. If that was set in statute, the PGS would be wrong—it would be fundamentally flawed. My evidence is that for Scotland to go down that line would be an error. The base rule is that the contributions should relate inherently to the development that is before the planning authority.

Mary Scanlon: Are you content that the provisions in the bill that extend and formalise the current section 75 agreement are acceptable? Leaving aside the planning gain supplement for a moment, does the bill address your concerns?

Richard Slipper: New sections 75A, 75B, 75C and 75D of the 1997 act are helpful and sharpen the definition. However, I still suggest that section 75 should state that contributions should be "fairly and reasonably related in scale and kind to the development before the authority."

Mary Scanlon: Do you see problems in our passing the bill with the planning gain supplement from Westminster hovering in the background?

Richard Slipper: Possibly, although that might be more an issue to resolve in the Parliament. There must be an early decision and, given that the bill is perhaps more important in Scotland, there has to be clarity for everybody giving evidence from the development side.

Mary Scanlon: The timing is obviously causing difficulties.

Richard Slipper: Yes it is.

Allan Lundmark: If it helps, rather than causing a delay this morning, I am happy to make available to you our evidence to HM Treasury on the proposals as currently drafted. We have given a commitment to HM Treasury and HM Revenue and Customs to have further discussions with HM Revenue and Customs about the calculation of the tax and recycling the revenues.

The Convener: The committee would welcome that additional written evidence.

Mary Scanlon: I understand that a similar measure—I am not sure whether it was called the planning gain supplement—was introduced in the 1970s. I have heard that it became unworkable and was abolished. Would any of you like to elaborate on that?

Colin Graham: I probably can, as I have researched that over the past couple of weeks. There have been three or four attempts over the past century to introduce some form of planning gain supplement, all of which have failed. The amount of tax collected from them has been minimal. Those attempts were made at a time when there were no section 75 obligations, affordable housing requirements or extensive planning conditions in other parts of the system. Therefore, the taxable part of the development process has already been increased by other mechanisms.

As it is proposed, the planning gain supplement is just too tricky to work on an evaluation basis. The proposal takes a simplistic view of the development market process. If a greenfield site that is given planning consent is worth £5,000 an acre one day and £1 million an acre the day after, one could tax the uplift. However, the reality is that the system does not work anything like that. There are draft allocations in development plans, finalised allocations, adopted local plans and outline consents and, at each stage, the value of sites in the open market goes up. At what point would one step in to take the uplift? As those of us on this side of the table know only too well, valuation is more of an art than a science. I have a severe concern that if the planning gain supplement is introduced in its current form, the whole system will collapse under a weight of self-assessments that are challenged by HM Treasury and, in turn, appealed by the developer. There are simply not the resources to hear that number of challenges.

The Convener: Why then has the Scottish Executive chosen to introduce a system of good neighbour agreements?

Richard Slipper: Some people query the need for those agreements to be put in statute, following quickly behind section 75 of the act, which deals with all regulation of the use of land and—arguably—the onward management of property. Other people argue that good neighbour agreements are perfectly competent devices to enshrine in section 75 if they are relevant to the onward management of the development. However, that is probably something for the lawyers to spend time on. On behalf of development interests, I would say that the argument comes back to a fair test of whether a good neighbour agreement is a reasonable property management undertaking for a

development. Many of the issues that the agreements aim to address are already competently controlled under planning conditions and agreements. Perhaps there should be further debate on whether there is a need for this additional level of statute.

The Convener: In general, are you in favour of the proposal, or are you against it?

Richard Slipper: I cannot say whether I speak for all in the development industry, but I think that for us in handling planning applications and in our implementation, the idea behind good neighbour agreements is a good one, which could be applied to the efficient onward management of public space. Given that, at the heart of many planning discussions, lies the notion of public realm, the effective management of that realm is vital. However, there are many ways in which the planning system could deliver certainty to communities. Rather than putting the good neighbour agreement in statute and making it such a strong fix, it could be done in a way that allows more flexibility and the ability to reassess how things are done.

The Convener: If the system was working effectively and communities had confidence in it, would the Executive have gone down this road?

Colin Graham: The honest answer is probably not. I understand from friends and colleagues who act as local authority planners that the enforcement side of any planning department can be the most poorly resourced of all. Much of the dissatisfaction that members of the public have with the present system concerns the minimal amount of enforcement that authorities undertake where there are breaches of planning consent. The issue is to do with resources. The need for good neighbour agreements could be avoided if the public had confidence that the enforcement process would be followed up.

Richard Slipper: There is clear evidence of community councils and other appropriate bodies having ample confidence to engage developers. One example of that is a development not far from the Parliament. The first requirement of the community council in its preliminary discussions with the developer was for the areas discussed to end up in a good neighbour agreement. So far, the developer has agreed to pursue that line. There is no shyness among community councils and other key consultees to purse the notion at the moment. If communities wish to ask for such an agreement, the existing planning system allows it to occur.

The Convener: However, although we can point to good examples—of which I am sure there are a number around the country—can we not also point to a number of spectacularly bad examples in which there is no possibility of a good neighbour agreement being reached between the developer and the community? Perhaps putting such agreements on a statutory basis will ensure that all communities are offered some sort of safeguard or protection.

Richard Slipper: It is possible.

The Convener: Mr Graham, you mentioned enforcement, to which the bill gives considerable consideration. Will the proposals, particularly the proposal to have enforcement charters, assist in building confidence for communities and developers that the system for dealing with enforcement and for ensuring that developers carry out their developments in compliance with their planning obligations is a transparent one?

Colin Graham: The simple answer is yes. Ironically, planning enforcement is quite an important issue for developers. One of the arguments that we frequently hear from the public concerns the ability or willingness of local authorities to enforce the planning consents, conditions or obligations that they may have imposed on developers. What we often say is that that is a matter that their local authority can deal with under its powers and often members of the public do not believe that the local authority will be particularly great at enforcing the planning consent after it has been granted. There is an element of truth in that. We would welcome anything that gives the enforcement process more teeth. The enforcement charter does that, and we welcome it, but I would like to ensure that local authorities have the resources to be able to implement it.

The Convener: If the resources are available for enforcement and if developers know that there will be proper enforcement, will developers be more honest about what they can and cannot deliver? My experience with the bad developers is that they often sign up to a whole raft of planning obligations, knowing that those will never be checked out, and then do what they want to do anyway. Will there be an onus not only on local authorities to enforce planning obligations better but on developers not to commit to obligations with which they have no intention of complying?

Colin Graham: I make it clear that I am not speaking for Miller. There are examples of developers having taken that view. If we consider the statistics for the number of planning enforcements taken by the local authorities and the number that result in successful prosecution, we see that the percentage rate is fairly small. There is a strong likelihood at the moment that a nasty developer—I would not put Miller in that category—will get away with any breaches of planning consents. If we are operating a system in which developers are much more fearful that the proper enforcement action will take place, we will find a lot more of them playing ball.

The Convener: Christine Grahame has a specific question on enforcement.

Christine Grahame: Yes. I have concerns about enforcement notices—I can see litigation looming with those. From a developer's point of view, is the procedure severe?

Hugh Crawford: Yes, if enforcement is not preceded by a programme of consultation, discussion and clarification, to find out what exactly is happening on the site, what is going adrift and whether there is some reason for it. If all those clarifications were not clearly in place at the front end, litigation could arise from a wrongful stop notice or enforcement procedure.

Christine Grahame: But, as I understand the section, activity can be stopped immediately. It does not leave much room for chat or negotiation.

Hugh Crawford: There has to be room for chat or negotiation, even if it is in the course of an afternoon. That is important.

Christine Grahame: Are there any other comments about stop notices?

Allan Lundmark: In practice, that is unlikely to happen. The planning authority would have to be satisfied that it was on very safe ground in order to issue a stop notice. In practice, what will happen is that the planning authority will draw a matter to the attention of the developer or its agents and seek to have it remedied. Only under exceptional circumstances, in which there was a clear, unambiguous breach and the planning authority was certain of its grounds, would it issue a stop notice. There is far more draconian power lurking in the planning gain supplements. HM Revenue and Customs can issue a stop notice for non-payment of tax, which will be far more severe than any notice a planning authority will ever serve on the development industry. That can happen instantaneously, without notice.

Christine Grahame: I do not want to make light of this, but the penalty is

"on summary conviction … a fine not exceeding £20,000".

That is not a lot, is it? Some developers might just go on anyway and take the risk.

Allan Lundmark: If a developer is in breach of a planning condition, the planning authority should take action against it. We need to be confident in the system. One way of building that confidence is when a community knows that a particular development has been consented and that it will be built according to that consent. We should always bear in mind that a developer is under an obligation to comply with the terms of the planning condition that it accepts. If, in the implementation of that planning consent, a developer discovers that there is a condition with which it cannot comply, it is open to the developer at any time to go back to the planning authority.

Christine Grahame: I agree, but is this measure tougher than what exists?

11:30

Richard Slipper: I am not a specialist on the enforcement side, nor have I studied it, but I understand that the proposals will toughen up and sharpen up the regime for the developers and various property interests that I represent. Rather than being relevant to the activities of developers such as those that are represented by the umbrella organisations giving evidence today, it is relevant to parties in breach, which are not the kind of outfits that would wish to discuss the modernisation of the system and get behind such modernisation. If there are parties in breach, they deserve much more severe penalties.

Christine Grahame: Rotten apples contaminate the barrel. I take your point.

Richard Slipper: Absolutely.

Christine Grahame: I notice, in fact, that it is only on summary conviction that there is a limit of £20,000. If the conviction is on indictment, the amount is open, so there could be substantial penalties if there was a serious criminal breach.

The Convener: The bill proposes to give the Executive, or an agency that it instructs, the power to audit local authority planning departments. Is that a welcome move on the part of the Executive?

Richard Slipper: Personally, I would endorse having provision for audit in statute. It should be an on-going exercise. There are different ways of carrying out audits. It has perhaps given a bit of a shake to the system in the past six years, but audits have been on-going in development control and development quality departments, and they should be. That should happen in the best possible manner between those carrying out the audit and those being audited. If audit is an on-going process, it will assist the system. If the statute states that there should be audits, there should be audits. They should not be a nebulous threat that is never used.

Allan Lundmark: The audit proposals are welcome, but audit must not be a cosy, closed process between the Executive and the planning authority. The audits should be transparent and the findings should be published and open to scrutiny by the community; it is only in that way that changes can be driven into the system where changes are required. Therefore, we need a system that goes beyond the current proposal that the matter will be dealt with between the Executive and planning authorities. We should publish the information and allow people to make their own judgments about performance.

The Convener: Who would you prefer to conduct the audit? If Audit Scotland did it, would that meet your criteria for independence?

Michael Levack: If we have such an organisation set up, it is difficult to see why it could not perform that role. Modern audits of any sort of business tend not to be so draconian, and there are always things that we learn from them. Audit is now seen in a more positive light and if it is open, that would be useful.

Allan Lundmark: There are public audit processes that are used in education, social services and health. I see no reason why a similar model should not be used in the planning system.

Euan Robson: We discussed increased fees to some extent and we touched on the question of what sort of redress there should be if a planning authority is not meeting its obligations. Is there anything that you would like to add to what was said earlier?

Colin Graham: With regard to the principle of increased fees, you will probably find little reluctance from the development industry to taking that on board. Arguably, the current planning application fee is the smallest part of the costs that are involved in progressing a planning application. The consultants' fees will add up to many times what the planning application fee will be. Would we pay more for a faster, more efficient system? Yes, there is no problem with that, but can you deliver that faster, more efficient system? I have concerns about that, not only in relation to local authorities, which face the sheer task of getting staff with sufficient skills to assess major applications, but in relation to getting consultation responses from bodies outwith local authorities, such as the Scottish Environment Protection Agency and Scottish Water. I have concerns about how we can engage those bodies and ensure that they play their role within a specific timescale, as the advice of any of those consultees could be vital to the determination of the application.

Richard Slipper: There will have to be some scrutiny of the levying of fees. As we mentioned, that might depend on the density of the development and the call on resources. I echo Colin Graham's advice on that. There seems to be a general view among developers that if the system is going to deliver more, they are prepared to pay more. That is a general view that we have heard from a number of clients. They will pay more as long as they get more, although there is no presumption that they will get consent. However, if the system is development plan led and if schemes are brought through the development plan from the start, it might be reasonable to believe that what one is backing as a planning application will be part of the policy.

If there is more urgency in the process, we will need defined points of delivery during the process. Given the resources that applicants will put in, it is important for them to know that responses will be received and actions will be executed by certain milestone dates. If the planning authority fails to do that, the developer should have recourse to claim back its costs. If the authority makes a refund, the cost might have to be passed on to a consultee, if it is responsible for the failure.

Mary Scanlon: You made several points about the resources that are available to planning departments. Will you comment on local authorities' capacity not only to deliver the proposals in the bill and make planning a greater priority but to change the culture so that it is less adversarial?

Richard Slipper: We touched on that earlier, but more resources are needed. We need more senior and principal directors of planning who can give direction, execute their own decisions and act in an executive manner. Equally, members need to meet more frequently and to engage with the complex issues that are presented in planning. A change in culture is needed whereby all councils make planning a political priority and recognise that it is vital to the delivery of a successful Scotland.

Mary Scanlon: Are you confident that that will happen when the bill is passed, given the additional upfront consultation and so on?

Richard Slipper: I am not entirely confident yet.

Christine Grahame: I note that Mr Slipper raised his eyebrows.

Colin Graham: I stress that the lack of resources in planning departments is not the only issue. Planning is often dependent on other departments within the local authority. The lack of resources in local authorities' transport and environmental departments impacts on the way in which applications are processed. One of the biggest bugbears is the section 75 process. Often, it does not even begin until the application has been determined and it can take six, nine or 12 months for the legal agreement to be signed. In the case of a major site, the on-going costs for the developer can be enormous.

It is interesting to contrast the section 75 process with the situation in London, where local authorities make developers engage in plenty of pre-application consultation but guarantee that they will get a decision within a relatively short time. The authority starts work on drafting the section 75 agreement from the word go and the developer is obliged to submit the title deeds with the application. That does not guarantee that consent will be given, but it is a way of speeding up the process.

Mary Scanlon: Some of the local authorities that I have spoken to say that they will have to allocate planners to deal with neighbourhood notifications, which will put even more pressure on departments. Do you want to comment on that?

Allan Lundmark: I am not sure that it is appropriate for me to comment on the way in which planning authorities allocate their resources internally. At the heart of the matter is the fact that planning authorities do not possess the skills that they need to deal with the complex planning applications of the present day. We need to give planning authorities those skills—that is what the bill is about. There are questions about resources but, as I said at the beginning, an underskilled planning service is an underconfident planning service. Planning authorities are not equipped to negotiate and they use techniques such as delay and frustration as substitutes. We must break that down. If design is at the heart of planning, planning authorities must have skilled designers who give advice. If planning is about the creation of value, planning authorities must have the relevant skills and understand how value is created and used by the development industry. If we give planning authorities those skills and resources, the debate, dialogue and negotiations will be far more constructive.

Mary Scanlon: The Convention of Scottish Local Authorities will be giving evidence to the committee. Obviously, the matter is part of its remit, but how do you think that planning departments can be given those skills?

Allan Lundmark: There are three issues. First, we should consider recruitment to planning departments. Planners are not the only resource that planning departments need. Surveyors, accountants and designers also play an important part. A greater use of private consultants is another issue. A lot of those skills exist in the private sector. The sharing of expertise is the third issue. In a small authority in which design is only an occasional issue, the design expertise should be shared with a neighbouring authority. If it is necessary, expertise should be brought in. People should be imaginative in the way in which they equip the planning authority to take part in the negotiation process.

Colin Graham: The question is not an easy one to answer. You are getting into the fundamentals of why planning is an unattractive career at the moment. There is no easy fix. A structural sea change in the way in which planners are viewed must come about before we will be able to get the required numbers—and, importantly, the quality—of people coming through.

The transfer of the neighbour notification process to local authorities is not something that I see as having a massive impact on resources. As Mr Lundmark has said, a qualified planner is not necessarily needed to set up neighbour notification forms. Technicians and so on can be employed for that, so there is no problem with that. I hope that I am not speaking out of turn when I say that there could be an increased fee to cover that. At the moment, I, as the developer, have to pay someone such as Richard Slipper to go off and consult for me. If he is no longer required for that purpose, I no longer have to pay him to do that work and can divert the resources elsewhere.

Richard Slipper: I would vouch for the fact that, in this city—and in other major cities in which there is more ambition to innovate on the issue of planning—there has been extremely successful partnership working. That has been led by the planning authority under strict rules. It has assessed what material is coming forward, but there are some landowner developers who want to engage in the process and who will throw a major team and many hundreds of thousands of pounds at an area study on master planning transport engineering in order to offer and engage that resource. Sometimes, that is left in-house with the planning department and the developer serves as a consultee. Such innovations are really good.

Not every authority needs an expert on tall buildings. North Lanarkshire does not need a coastal protection officer. Rather than having every authority skilling up, they need to know that resources can be brought in to deal with specific developments.

We have some good planning schools in Scotland, but we need more and we need to look closely at the fact that postgraduate students are increasingly choosing courses such as the one that is offered by Heriot-Watt University in order to move into urban planning from geography, accounting, business and finance. That is a great sign and a lot more can be done to popularise the urban planning profession.

Patrick Harvie: I have some questions about public involvement. It has been suggested that the witnesses might have views on the third-party right of appeal. If so, they are welcome to share them.

Earlier, when talking about the reduced opportunities for multiple and repeat applications, Mr Slipper suggested that, almost as a quid pro quo, third parties must come to understand that they have one opportunity to make their comments and will need to accept the legitimacy of the decision maker. If we accept that at the moment many people do not accept the legitimacy of the decision maker and feel that the planning system is inherently inequitable, how can we best achieve a sense of trust in the system and a belief that the system is fair?

Richard Slipper: There has already been an ample change in culture in relation to the need to

consult early. At the moment, the public have opportunities to engage with local authorities in relation to local plans and to say that they do or do not want change in their areas. Those are the seminal decisions that local authorities have to share with local communities.

I do not profess to be a legal expert but we are picking up the message from certain human rights cases that there has to come a moment at which the authority is trusted to move on. That lies at the heart of what a new planning statute will say in Scotland, and the national planning framework can augment it. If the system is about growth, change and population expansion, it might have to bite on some key issues for certain urban areas and say that it will, therefore, be about areas of major change.

The selection of areas of major change will be a difficult process, but it will mean effective consultation. There will have to be milestones and staging posts in the process—elected members of the local authority, and possibly ministers, will have to make it clear that they are moments of decision, although the next review round may bring another public consultation process. If we do not have certainty, my concern is that the majority view will not be taken into account. In my experience, the majority voice always engages and says either, "Do not come here, or we will oppose you throughout the process," or, "We welcome change, but do it this way." Thankfully, the latter is more often the case in urban areas. However, the possibly vindictive and perhaps vexatious individual with a vested interest could stultify the whole planning process if there was a right of appeal. Some individuals have an interest in continuing to trade as they have done for many years; others have an interest in continuing to have a view across a certain part of the environment. My concern is that we would empower, across what would be seen to be a thin layer of opportunity, many people who act as individuals and not for the majority.

11:45

Patrick Harvie: My question was about how we can achieve a sense of trust in the system. We are talking about planning, so we will never achieve a situation in which every decision keeps everybody happy, but if we want people to accept decisions that are made against their wishes, they need to have a sense of trust and the feeling that they were given a fair crack of the whip. How do we achieve that sense of justice and fairness?

Richard Slipper: I agree that people need to have that feeling. We can achieve that by making it clear in statute that consultation means full engagement. However, supplementary guidance will set out the best practice for consultation.

Patrick Harvie: What is that best practice?

Richard Slipper: There are many trendy terms and words for it, such as "inquiry by design", "workshop", "charrette", "discussion session", "forum" and "focus group". However, in my experience, the process involves the developer's expert team and local authority experts spending a lot of time in a room with local interests, by which I mean representative individuals, not every individual with a local interest. The process should not involve large public meetings that do not steer the debate; we need a more intelligent approach if we are to get effective engagement and consultation. Records should be taken of what each side has said and notes should be made of changes that the developer has made in working on the proposals. That will allow everybody to move on to the next stage.

Patrick Harvie: One way of ensuring that people are up for that kind of involvement and that they regard opportunities to be consulted as meaningful is to ensure that they do not feel powerless in the system. Many people feel powerless in the present system. If the Scottish Executive told you as a citizen that it was going to take away your right to vote but consult you more, would you feel more or less powerful?

Richard Slipper: There is a risk that people feel powerless, so it is vital that the system empowers people and feels accessible. In the major developments with which we have been involved, we have spent countless hours engaging with numerous groups and individuals—people increasingly engage and know that they have a right to do so. If the development procedure order, circular guidance or planning advice notes make it clear how engagement should take place, groups will be able to challenge a developer or a local plan team and claim that the procedure was not followed properly. That threat to anybody who tries to squeeze through the system without full engagement should help to empower individuals and make them feel that they can engage.

Colin Graham: One practical measure that would help to foster a sense of involvement in the process would be the greater use of hearings in planning committees. One frustration that we have as a developer—I can only imagine how members of the public feel—is that after two or three years of planning negotiations and various reports and meetings, when the project gets to the planning committee for the ultimate decision, it takes two seconds, two minutes or five minutes. The procedure sometimes involves nothing more than someone reading out the title of the planning application. A citizen sitting there who had not been as heavily involved in the process as the developer or their agents had been would feel slightly aggrieved that such an important issue

was dealt with in a summary fashion. I would far prefer it if I had the chance to give my view, the objectors had the chance to give their view and the debate was heard. Such open debate would engender much more honesty in the system.

Patrick Harvie: You almost suggest that neither side should have an appeal.

Colin Graham: I would not go that far.

Patrick Harvie: I did not think that you would.

I will have one last pitch at the matter. I suggest that if a plan that has been fully consulted on, in which people have been involved up front and to which people have contributed, goes out of date, that is a promise not kept. In such circumstances, one way to give people a sense that the promise mattered and the fact that it was not kept matters is to give them more rights.

Allan Lundmark: The pressure must be on updating the plan.

Patrick Harvie: Absolutely.

Allan Lundmark: The term "out-of-date development plan" should almost be an oxymoron in a forum such as this.

Patrick Harvie: If we achieved up-to-date plans, no appeals would be made—that would be the case even if the right that I propose were granted. People would not need to exercise the right, but having it would make them feel more powerful in the system.

Allan Lundmark: I do not accept that. The thrust of what we must focus on is what is referred to as front-end consultation and front-end involvement. Richard Slipper talked the committee through the process in which many developers are engaged.

Any developer would be ill-advised to believe that it could pitch up with a planning application, lodge it and wait for the process to run. That would guarantee that the only people who came to the table were objectors, because the present process allows only objectors to become involved—there is no way to involve the supporters of what a developer is trying to do. It is therefore far better to engage with the community at the beginning of the process and to talk to people who support the development as well as to people who object to it because they are concerned about its design or the details of it. That means that people who totally oppose the concept will also be engaged. At the moment, people normally reach the table only if they totally oppose the concept, so it is important that we start to talk to people.

We should talk to the people who will buy the houses that we are building in an area. We know that most people who buy houses on our developments come from the locality. Research shows that the vast majority live within 5 or 10 miles of a site—most live within the bottom end of that range. It therefore makes a lot of sense for us to talk to the local community. We know that our development proposals have an impact on community infrastructure and on how a community functions, so it makes a lot of sense to talk to people about transport connections, pedestrian routes and open space that the community will use.

It is far better to focus efforts on how that process is engaged in. We are well equipped for that process and a lot of resources can be put into it. The question that we are asking is how we equip the community to participate in those discussions in an informed way. That is why we have asked Planning Aid for Scotland to answer some of our questions. For example, to whom do we talk? The community can be defined at different levels—a sports centre is defined not in narrow terms of geography but in terms of who will use it. How do we talk to those people? How do we equip them to have a proper and meaningful discussion with our professional advisers? How is closure achieved and how is that output fed into the planning system? As I said, we have commissioned Planning Aid for Scotland to consider those questions and to tell us how that might be done.

However, developers are already taking imaginative initiatives to engage with communities. One of my member companies was concerned that if proposals were simply put in the local library or supermarket, people would not have the time to consider, engage with and discuss them, so the company set up an imaginative website that allows people to drill into all the plans. The website details not the distance from houses to schools but how long a journey takes to walk or cycle. It shows what the town centre might look like and provides different options for people to drill into and comment on. The aim was to reach the young family with children who cannot afford to give up a Saturday morning or whatever. The people who commented were then engaged in face-to-face discussions.

The industry and our advisers are doing many things out there to engage with communities. At the end of the day, the driving force for us is that we must sell what we build in the community; ensuring that we engage with the community is therefore in our interest. Huge commercial drivers exist. Furthermore, people in the planning system will say, "This is what we expect you to do." Someone said earlier that we expect engagement, that we engage out there now and that we are asking serious questions about how we can engage more effectively.

Patrick Harvie: I understand what you are saying about its being in your interest to engage, but you would not suggest that all developers are successfully engaging at the moment.

Allan Lundmark: None of us would say that. I am saying that the housebuilding industry recognises the need to engage with the communities that we are building. New processes are being brought on board and new requirements are being placed on us.

We should not lose sight of the fact that if we become involved in a community engagement process under the current planning system, the right exists to reject totally what happens. No matter how elaborate the engagement is, people can say, "We're not interested. We'll put that to one side." Under the new system, there will be a statutory requirement for us to engage in many cases and, if we do so, the planning authority will be obliged to take on board the issues that are raised. The process and our approach are changing, developing and evolving and many people at different levels are trying to influence those changes.

The Convener: I invite Christine Grahame to ask a brief final question.

Christine Grahame: I will be brief. I absolutely concur with everything that has been said and return to what Mr Levack said about people having to understand plans, which must be in a digestible form, plans having to be accessible at the pre-consultation stage and so on. However, questions relating to certain parts of the bill remain unanswered. Let us assume that the proposals are implemented and third parties and communities are cut out of the process. It is not clear who will be at pre-hearings. Will only the developer and the planning authority be at a pre-hearing? There could be exclusion from the process.

On public inquiries, I return to the evidence that was submitted by the Faculty of Advocates, whose members have represented communities and developers. The faculty was concerned that people will feel disenfranchised because rights will be taken from them.

Will you comment on a specific example? Let us consider the section on variation of planning applications. The agreement between the developer and the planning authority can be varied as long as the variation is not "substantial". There is the rub. The developer and the planning authority may agree that a variation is not substantial, but the community may view the variation as substantial. In my reading of the bill, the community will have no right to enter into the process at that stage, so the variation would go through.

Will you comment on those three community rights issues? Everything else in the garden might be rosy, with all the up-front consultation and so on, but those issues remain.

Michael Levack: We have not specified in this morning's discussion whether we are talking about residential developments or other developments. On residential developments, it has been said that the houses that are built will be sold mainly to the local community, although I appreciate that people can commute—

Christine Grahame: Shall we consider a tougher example, then? I accept what you say. The number of houses and their shape may be open to tweaking and mediation with a community, but shall we consider a tougher development example, such as a quarry, a wind farm or a much more emotive example?

Michael Levack: I would not want to comment on such examples because I do not represent parties that are involved in such things.

Christine Grahame: I see. Will you proceed with what you were saying, then? Let us say that a housing development is proposed.

Michael Levack: If houses are to be put on sale at the end of the process, they must be attractive to the local community, and if affordable housing—possibly to rent—has been proposed, the local authority, local housing associations and community bodies will be actively involved in developing the proposals.

Christine Grahame: People in villages often have concerns about the proposed quantity of houses. Is that a contentious issue?

The Convener: Ms Grahame, I remind you that I invited you to ask one succinct question. I have allowed you flexibility and you have asked several questions. You should therefore refrain from asking the witnesses further questions. I ask the witnesses to make final comments on the three substantive points that Ms Grahame has made.

12:00

Richard Slipper: I am willing to help with a response to the example. In short, I agree that Christine Grahame raises some valid points. It is normal for our clients to expect the opposing view to be presented and, if there are to be pre-hearings, a planning committee might allow the same hearing that an inquiry would, if it was short and—it is to be hoped—succinct. The normal run of things is that the inquiry hears the case for the developer and the case for the objectors, allows questions from members and then has a final debate. The bill may be silent on that, but I expect that matters will be pursued in that way. I hope that that is a helpful, positive response on engaging community views.

The variations that Christine Grahame mentioned are not substantial. It might be fair that those who have been recorded as objectors at the first stage of a planning application are consulted where a variation is proposed, but I still believe that it should be at the discretion of the director of planning—perhaps with council members—to take a view and decide what is a substantial variation. In my experience, a variation is quite often insubstantial—it is a matter of, for example, varying the approved plan for the building's windows—and it might weigh down the system to involve too many people in something that is literally not material.

Hugh Crawford: I endorse Richard Slipper's comments on dealing with particular applications, but a splendid opportunity exists for the public to be involved in local plan inquiries. That opportunity is taken and used widely to debate all manner of issues in the setting of a local plan or the setting and approval of a development plan, to which applications should conform.

The Convener: I thank the witnesses for appearing before us. I appreciate their having sat here for two and a half hours. We are now running behind schedule so, if the witnesses would like to raise any additional points with the committee, we would be grateful to hear from them in writing.

The committee will be suspended for five minutes to allow for a changeover of witnesses.

12:02

Meeting suspended.

12:08

On resuming—

The Convener: I welcome our second panel of witnesses, who represent the power generation industry. We are joined by Maf Smith, the chief executive of the Scottish Renewables Forum; Harry Malyon, the Scotland development manager for Npower Renewables; Debbie Harper, the development and policy manager for Scottish Power; and Alasdair Macleod, the Scotland development manager for Airtricity.

I thank you for attending the committee and for waiting. The committee has specific lines of questioning that it would like to go over with you. If, at the end of our questions, there are matters that you feel we have not asked you about, we will give you an opportunity to make further comments and to provide the committee with further written evidence.

Did the Executive consult effectively on its proposals for the Planning etc (Scotland) Bill and were you able to engage in that process effectively?

Maf Smith (Scottish Renewables Forum): Yes, we were able to engage effectively. The white paper was useful because it set out some broad themes. Prior to its publication, a number of consultations were held on related issues. It is fair to say that we are as an industry actively involved in planning, so we felt that we had a lot of expertise to offer. We are pleased that the Executive reflected on some of those issues prior to introducing the bill. We have engaged in the process; we have set up working groups to consider the issues and we have been able to comment.

Debbie Harper (Scottish Power): We had no problems. We had effective access to the correct documentation in the timescales that were allowed.

The Convener: Will the bill enable the development of cleaner and more sustainable forms of energy in Scotland?

Maf Smith: We support the overall thrust of the bill in what it is trying to do and the improvements that it is trying to make. We also agree with the frustrations that have been expressed about the current system. I expect that we will come to specific points that some of us have raised. It is worth highlighting that the key factor is resources, which the previous panel of witnesses obviously mentioned. We support the bill's aspirations on efficiency and inclusion—although we can provide examples of other things that we would do or things that we would take further—but unless the bill is backed up by resources, many of the aspirations will go unrealised.

Alasdair Macleod (Airtricity): We strongly support the aspiration to ensure that the planning system is modernised and becomes more responsive. The renewables industry is growing very quickly, so a planning system that the industry can work with is vital.

Patrick Harvie: How has the renewables sector engaged with the development of the first national planning framework? How do you expect to feed into the next one, if and when that process gets up and running? What impact will the national planning framework's existence have on the sector?

Debbie Harper: We support the principle of a national planning framework and we look forward to being involved in the consultation on the next national planning framework, when it arrives. We see the national planning framework as being a crucial tool in addressing the strategic energy issues in Scotland and in the energy sector's future development. We look forward to the framework and we hope that major energy infrastructure and transmission systems are reflected in the national planning framework.

A side issue, which I mentioned in our submission, is that we would support enhanced status being given in the national planning framework to developments in the national infrastructure, such as sub-stations that are associated with key bits of infrastructure.

Harry Malyon (Npower Renewables): It is not reasonable for all projects to be at the top of the hierarchy, but the infrastructure is definitely crucial in the facilitation of projects. If projects are sensibly proposed, they should go through the normal planning framework.

Patrick Harvie: Does the panel expect that the national planning framework will achieve the kind of co-ordination that many people are looking for in the development of renewables? How easily will the framework mesh with other factors, such as the Electricity Act 1989 and your organisations' internal processes?

Debbie Harper: It is stated that the bill aims to give the national planning framework enhanced status. That statement is welcome.

You are correct to suggest that the majority of our developments that the national planning framework will be concerned with will be Electricity Act 1989 applications as opposed to Town and Country Planning (Scotland) Act 1997 applications. An application under the 1989 act would have to go through its own consultation processes with local planning authorities. The framework should reflect the principles that the revised planning legislation seeks to achieve.

12:15

Maf Smith: I will comment on issues around the Electricity Act 1989. This perhaps relates more to the issue of hierarchies in planning, but there is in any case a need for agreement on the place of section 75 definitions under the 1997 act within the hierarchy, and on smaller-scale proposals involving renewables. The white paper discussed renewables and gave examples of schemes, but it failed to define the impact in relation to the hierarchy. As an industry, we wish to be involved in that. There are already examples of local authorities adopting renewables strategies or carrying out assessments of their development plans and looking at the hierarchies in a different way. The big question for authorities is about the impact of the Electricity Act 1989. It would be good if local authorities and the industry could work with the Executive to sort the situation out, and it would be helpful if a shared definition could be agreed.

Patrick Harvie: A large number of witnesses have expressed concern that the process for approving the NPF is perhaps not all that it could be. It involves a consultative draft, to be followed by a document to be laid before Parliament for 40 days. Ministers, rather than Parliament, will then sign it off. Would any of the witnesses like to comment on that process? Will it give you and the communities with which you engage opportunities to influence the framework's content?

Harry Malyon: I find it difficult to view some of our projects in the context of the national planning framework. Debbie Harper's projects would, in terms of transmission and infrastructure, be more suitable for inclusion in a national framework.

Patrick Harvie: That might apply to specific developments, but I am sure that the NPF will have an impact on the sector beyond specific developments.

Debbie Harper: Yes, I am sure that it will. I think that Harry Malyon was referring to particular projects and how they might be defined in any future hierarchies that are to be determined under the bill. In the type of business that we are involved in and that we are representing, we would take every opportunity to be involved in consultation, either as members of the community or as businesses. We would use the various business forums that deal with the national planning framework and its drafting to get involved throughout the process.

Alasdair Macleod: Generally, local authorities have gained a lot of experience on Electricity Act proposals. It would be useful if guidance could be made available on how Electricity Act proposals might link into the national planning framework.

Mr Home Robertson: There has been some controversy about the geographical locations of renewable energy projects. At present, that is driven by people such as you making applications for consent. It could be said to be about fishing expeditions, testing the water and seeing what happens. Is there a case for turning the NPF on its head and getting either the Executive or the strategic planning authority to identify preferred areas for renewable energy projects and then to invite applications in those areas, rather than use the more random approach that currently puts the responsibility in your court? Could that be a useful way to approach this difficult issue?

Maf Smith: The current situation is far from random.

Mr Home Robertson: It sometimes looks as though it is.

Maf Smith: The implication is being made that there is a vacuum when there is, in fact, a strong policy structure that guides applications and decisions. Currently, local authorities may consider preferred areas—many do so and the industry has supported that. Our view is that that can be done appropriately at local authority level, where there is more understanding of key issues,

which means that more useful detail can be applied.

There is also guidance from Scottish Natural Heritage on landscape, ecology and zoning, which has been useful and helpful. Figures from SNH show that the bulk of development proposals accord with what it says are acceptable zones. As a result, there is already a lot of helpful guidance and data at national level and from the statutory consultees and local authorities.

It is worth noting that different types of renewables require a criteria-based planning-policy system, because many different factors have to be taken into account. A national framework or plan that attempted to cover them all would take a lot of time and cost a lot of money to put together and, because it would have to involve many parties, would likely contain many inaccuracies. As a result, we support there being a local focus for that framework.

Mr Home Robertson: Is there a risk that some bloody-minded local authority with a nimby attitude might say, "This is all too difficult. We don't want any of these things in our area"? Could responsibility be taken at strategic level, if you like, to designate the parts of Scotland that are most appropriate for wind farms?

Harry Malyon: That would go against the requirement for rigorous environmental assessment and local consultation for individual schemes. However effective and well-meaning strategic plans might be, the weighting that they give certain constraints and criteria always differs from the weighting that others would give them.

Moreover, circumstances can change. For example, Dumfries and Galloway Council spent a great deal of time and resources on preparing a one-kilometre-square strategic plan for the whole region, in which certain fundamental economic assumptions were made about, for example, suitable wind speeds for wind farms—for which the plan happened to be—and electricity grid connections, but those assumptions were not necessarily right. As a result, Dumfries and Galloway found that it was asking the wrong questions.

With the requirement to carry out a strategic environmental assessment for the plan, things will become even more complicated. My fear is that such a strategic plan would be unwieldy and costly and would probably be almost out of date by the time it was prepared.

Although we very much appreciate the guidance on designated areas and guidance from local authorities and SNH on what they feel might be acceptable, it would be wrong to prejudge an individual application based on whether the development in question happened to be in a preferred area; after all, a site outwith a preferred area might well meet all the criteria on which the preferred area had been designated and, conversely, a site in a preferred area might, for design reasons, be unacceptable. The acceptability of planning applications should be determined by assessment of the individual site and should be the result of a rigorous EIA and consultation.

Maf Smith: There is a proposal to update national planning policy guideline 6—on renewable energy developments—to Scottish planning policy 6. That would be the right way of advising local authorities on how to assess renewable schemes, so we urge the committee to consider whether the expected SPP 6 should set out a criteria-based policy that asks local authorities to set the framework within, for example, preferred areas.

Mary Scanlon: Debbie Harper mentioned to Patrick Harvie that Scottish Power would like transmission upgrades and major generation infrastructure, such as the Beauly to Denny power line, to be included in the national planning framework. How would such an approach benefit not only developers but communities?

Debbie Harper: If the NPF were to set the context of future energy and other developments, it would make what is being pursued more transparent both for the industry and for communities. It would be set out in a different timescale and it would be clearer to everyone involved.

Scott Barrie: I want to turn to the hierarchy of developments. In its submission, Scottish Power favours an indication of where national, major and local developments might fit in the hierarchy. Maf Smith touched on section 75, but what other specific considerations need to be given to renewable developments to fit in the proposed hierarchy?

Debbie Harper: In what way?

Scott Barrie: In your paper you suggest that a distinction be made between national, major and local developments. What other considerations should the committee be aware of?

Debbie Harper: I say for the avoidance of doubt that I suggested a categorisation for energy projects: a project over a 50MW threshold would be deemed to be a national project; a project between 5MW and 50MW would be a major project; and a project under 5MW would be a local project. Local schemes being defined as less than 5MW would make them more community-based. Such categorisation would avoid confusion as to the scale of a development, particularly in respect of its footprint and the type of involvement. When I suggested that a project should be classed as

major, I was thinking about the terms of assessment of a project before submission to the planning system and the types of scrutiny after submission.

Harry Malyon: If a hydropower scheme, such as those in which we are involved, is over the 1MW threshold, rather than the 50MW threshold, it is subject to Electricity Act procedures. No such schemes could be defined as national developments—in some cases, one wonders whether they could be defined as major developments, albeit that they require environmental impact assessments. We want separate legislation or statutory instruments so that hydro schemes will be treated slightly differently.

Alasdair Macleod: I want to make a comparison with the Irish planning system. Airtricity, which is an Irish company, has several energy schemes in the Republic of Ireland. The Irish Government is preparing a strategic infrastructure bill and proposes that applications for wind farms over 100MW capacity or with 50 turbines would be handled by the Irish Planning Appeals Board—An Bord Pleanála—and not by county councils, which is similar to the proposal on national developments for Scotland. One reason for the promotion of the strategic infrastructure bill is to make the Irish system more responsive in respect of the speed of its decision-making. The aim is that decisions would be given within 28 weeks by the planning board. That recognises the importance of delivering major infrastructure projects in the Republic.

Mr Home Robertson: The Scottish Renewables Forum has expressed misgivings about supplementary planning guidance—which could be attached to local plans under the terms of the legislation—because of the risk that it could be used as a device to frustrate national guidance. However, things could be the other way round—such supplementary guidance could be a positive device to help to identify more suitable sites. Will Mr Smith expand on that theme?

Maf Smith: I should make it clear that we are not, as with the last panel, opposed to supplementary planning guidance, although we have concerns about its status, on which the bill is unclear. Supplementary planning guidance would need to be subjected to appropriate scrutiny. What is not clear is what would happen were it to depart from a development plan or from national guidance. We know of local authorities that have adopted supplementary guidance that has departed from the local development plan. If that happens, the plan and the guidance need to be reconciled; if they are not reconciled, people will have two—contradictory—pieces of guidance at local level. We say to the committee that that should be resolved. Supplementary guidance needs to be subject to the same level of scrutiny as the development plan. People would need to know why supplementary guidance contradicted the development plan.

12:30

Harry Malyon: If I may, I will give an example that illustrates our concerns. Last October, I attended a hearing, although it was not one that involved a scheme of ours. During the hearing, a member of the planning committee said to the head of development control, “We have two areas of guidance before us: the national planning policy guidance and our own supplementary guidance. Clearly, they are in conflict. Which one should we give greater weight to?”

The head of development control said, “The supplementary guidance is your guidance. It derives from what you see are the concerns of local people. Therefore, you are entitled to give it more weight than the national planning policy.” That is a matter of concern. The Parliament has an opportunity to make it clear in the bill that supplementary planning guidance is subordinate to national planning policy.

Mr Home Robertson: We have got the message: you are looking for consistency in the various categories of plans and guidance.

I move on to the issue of variations to planning applications. Reservations about the measure were expressed in written evidence, but it could provide the flexibility that is required to address matters that arise in environmental impact assessments, for example. Do you want to develop that theme?

Maf Smith: I will start with the scoping that is undertaken prior to the formal submission of an application. As part of that procedure, the local authority or a statutory consultee, for example, can raise all the relevant issues. The EIA work is undertaken, following the submission of the formal application, and pertinent and relevant issues can arise at that time. Under the current planning system, developers are prevented from making amendments. That is a concern, as amendments can be positive and helpful in securing better schemes.

Conversely, we have concerns about the proposal to amend section 39 of the principal act, which makes provision for a local authority to decline to determine an application because of a contradiction with the previous section. If a developer cannot secure a variation, they may decide to resubmit but, if they are not allowed to do so, a catch-22 situation ensues. We would like that to be resolved. In general, the variation powers are good. They will produce not only better

schemes but better involvement of community and statutory consultees.

Debbie Harper: I endorse that. There is a perception that an application that is varied following submission is a bad thing, as it is flawed in some way. Often an application is varied in order to meet the concerns of statutory consultees or as a result of communication with communities or third-party consultations. In some cases, the developer has made a positive move in making the variation. In any case, the developer's ability to vary will be at the discretion of the local authority or the determining body.

On third-party involvement in the variation process, the bill puts a requirement on the developer to advertise the variation if it departs significantly from the original application. I reiterate that a developer deciding to vary an application should not always be thought of as a bad thing. Often, it is positive for the development of a project.

Alasdair Macleod: There is another aspect to variation, which is the ability to vary a consent that has been granted. Because of the nature, scale and location in which wind farms tend to be built, we have an ecological and an archaeological clerk of works on site. They work with us and with the local authority to ensure, for example, that if an access track has to be moved to avoid a particular feature found on the site, it can be moved with the authority's consent, using the variation powers. Those powers are important and they work effectively.

Mr Home Robertson: So you are looking for more flexibility.

Alasdair Macleod: Yes.

Christine Grahame: What will be the practical implications for you of pre-application consultations and predetermination hearings?

Harry Malyon: The proposal for an application notice is understandable, providing the application does not have to be defined too closely. That would defuse the purpose of consultation. The proposal for a pre-application consultation is fine, as long as it does not seek to predetermine the application itself. A pre-application consultation that seeks to resolve issues and to engage with consultees before the planning authority's proper scrutiny of the application would be a good thing; but a pre-application consultation that puts everybody's backs against the wall and leads to confrontation would be hard for a local authority to go back to after the due process of consideration.

Debbie Harper: Pre-application notification is a good idea. If local authorities know what is coming, it is easier for them to allocate resources. Our only concern is about the period of notice. The bill suggests 12 weeks, which we feel is a long period before the actual submission. I believe that other kinds of legislation have periods of 28 days. That would be a more realistic timescale.

Alasdair Macleod: I agree with Debbie. The wind industry excels in its approach to pre-application consultation. Primarily because most applications will involve EIAs, there is a long lead-in before the application is submitted. That gives us the opportunity to engage with the community and to discover the issues that are important locally. Those issues can then be addressed, primarily from an environmental perspective.

I share the concern about the timescale for statutory pre-application consultation. In the lead-in to a submission, a project is refined and modified until it is acceptable. If there was a period of 12 weeks before the submission, the community might be concerned that changes had been made. A period of 28 days would be more appropriate.

Christine Grahame: What about predetermination hearings?

Alasdair Macleod: Again, I welcome those. Many local authorities will offer hearings when they reach the determination stage, particularly if the application is considered to be a departure from the development plan. The current advice in PAN 41 is that departures from the development plan should be subject to hearings. Hearings give the developer the opportunity to comment on objections or to expand on the benefits of a project.

Christine Grahame: If there are departures from the development plan, should the community be at the hearings too?

Alasdair Macleod: Yes.

Debbie Harper: Yes.

Christine Grahame: Are you concerned that procedures may not be standardised across the various planning authorities? Should they be standardised, or should there be flexibility?

Alasdair Macleod: If they were standardised, communities would have more certainty. Procedures vary from local authority to local authority. Standardisation would be welcome as it would give communities certainty and a clearer understanding of the planning system.

The Convener: Are you, as developers, in full agreement with the Executive's proposals on public consultation and involvement in the planning process?

Witnesses: Yes.

The Convener: Thank you. That is useful to know.

Mr Home Robertson: Was that a trick question?

The Convener: It may well have been, Mr Home Robertson.

The bill gives five new grounds on which a local authority can refuse to consider whether to give planning permission. Scottish Power has suggested that those provisions might be unduly restrictive. Will you outline why you think that that is the case?

Debbie Harper: I am sorry; will you clarify that for me?

The Convener: In the bill, there are five new grounds on which a local authority does not have to consider a planning application. In your written submission, you suggested that those might not be helpful. Will you tell us why you think that the new grounds are unnecessary?

Debbie Harper: There are a number of reasons why it might not be helpful for a local authority to suggest that it does not want to consider an application. I think that you are referring to our comments on the resubmission of applications. Often, an application in which we are involved has to be varied or amended in some way. The mixture of local authorities' discretion to refuse an application, the refusal of a substantially varied application and the limited possibilities for appeal is of concern to us. We are concerned not about one of those in particular but about the combination of the three.

The Convener: If there is proper and full consultation with communities, the need to amend any proposed application will come early on in the process, before an application is submitted. If that is the case and if your organisations are signed up to full consultation and involvement with local communities, it might not be necessary to reapply constantly for the same planning consent, so the point that you make in your written submission is perhaps bogus.

Debbie Harper: In an ideal world, communities would give feedback at the early stages of an application, but that is not always the case, unfortunately. At the moment, we try our best to implement full community consultation at the scoping stage of a project and when the application is in for determination. I am afraid that you would be amazed how many people come to us even after consent is issued and say that they did not know anything about the application regardless of whether we have advertised in papers, done leaflet drops or held exhibitions. The opportunity to resubmit an application—either a variation of an existing application or a slightly amended scheme—to accord with feedback that we have had throughout the process is welcome. The provision will be good for developers.

Alasdair Macleod: The requirement to modify an application often results from comments from statutory and other consultees. Scottish Natural Heritage or Historic Scotland might raise a particular concern that was not identified through the environmental impact assessment and seek a modification—for example, the deletion of certain turbines from a project. Airtricity might agree with that and wish to modify the application but, under the bill, the local authority could decline to accept that application. That is where the concern lies. It is about enabling us to submit not multiple applications for the same development, but the same application that has been modified to take account of feedback.

12:45

Maf Smith: There was a recent example of a scheme that had planning permission on which a statutory consultee issued a further view very late in the day. It said that other issues had come up since it made its first submission, it had some objections and it was seeking to have several small changes made to the plan. At that point, the developer did not have time to respond because only a couple of weeks were left before the date of the planning decision. The local authority looked at the situation and decided to reject the scheme on the basis of the new information. The developer was then able to look at the plan again and resubmit the application for the scheme having taken on board the statutory consultee's comments. Effectively, the developer had removed all concerns.

That would not be allowed under the current bill proposals, even though the developer had created an acceptable development and the consultee was able to respond effectively. Things can happen during and after a consultation and the submission of the plan, right up until the determination. The legislation needs to be flexible enough to allow such things to be taken into account.

The Convener: Do you accept that communities also need a degree of certainty, particularly about developments that they do not necessarily want on their doorstep but which they accept society requires? The constant threat of an application being made to a local authority time after time causes communities great anxiety. A balance must be struck between the rights of developers and those of communities.

Harry Malyon: I accept that. What usually happens with a variation of an application that might lead to resubmission is that circumstances change. That can lead to an adjustment that benefits the community or the environment. For example, recently we had to make a variation because of otters moving their holt up close to a hydro intake, which resulted in us having to move

the intake to a different place with the full agreement of Scottish Natural Heritage.

Such variations and resubmissions would usually be for a scheme that the community and the environmental consultee would see as an improvement. I absolutely understand how communities might view the prospect of someone making an application to use 20 machines but halfway through the process adding another 10 machines. That would be wrong.

The Convener: A local authority could use those five criteria, but there is absolutely no requirement for it to exercise the new powers if the circumstances that Mr Malyon has just outlined are to the benefit of the community and the local authority.

Harry Malyon: I understand that. The bill states:

"if the planning authority consider the variation to be such that there is a substantial change in the description of the development for which planning permission is sought, they are not to agree to the variation."

I am looking for guidance in a planning advice note or elsewhere about the definition of "a substantial change" and for some comfort that if there is a variation that most parties would think reasonable, the application will not be thrown out just because the local authority might have taken against the application. There are dangers in the bill's wording.

Debbie Harper: I understand the point entirely. Local developers fear that if a local authority had a problem with the type of application that they were pursuing, that section might be used to their disadvantage. If the section were to clarify that a variation was intended to meet the requirements of a statutory consultee's comments or to address the concerns raised by consultees throughout the process, it would be a positive move forward.

Cathie Craigie: Each planning authority will be required to establish a formal scheme of delegation. Where a planning officer refuses or grants permission, subject to conditions, the applicant will have a right to review. What are your thoughts and comments on that aspect of the bill?

Debbie Harper: We have concerns that the right of appeal against a local authority's decision in effect will stay with the local authority. We feel that it would be fair to offer an independent, third-party right of appeal outside the local authority.

Cathie Craigie: Do you have any ground for suggesting that it might be unfair to leave the decision with the local authority, since it will be delegated to officers of the council?

Debbie Harper: Our concern is that if a local authority had a problem with the type of development that someone was pursuing, the decision taken might not be the same as that of a third party.

Current statistics show that something like 30 per cent of appeals that go to the Scottish Executive are allowed. That makes us think that 30 per cent of those determinations should have been positive when the plans went to the local authority or determining body.

Cathie Craigie: Would many applications from your organisation be dealt with under a scheme of delegation?

Debbie Harper: Probably not from my industry.

Maf Smith: What you describe is a real issue for smaller-scale developments. Experience to date suggests that a one-size-fits-all approach can be taken in the planning system. For example, an individual business might seek to install a turbine, which would be a relatively minor-scale development, but in some instances local authorities have sought to apply the criteria that they use for major-scale wind farms and have showed no willingness to inject a sense of realism into how they consider such a scheme. We are concerned that under the delegated authority proposals, those schemes would have no exit route, whereas larger schemes would be able to seek appeal by dint of their size and the hierarchy. Smaller schemes, in which there might be more opportunity for development as well as community-led development, stand a chance of being trapped because of criteria being applied too stringently or inappropriately.

Cathie Craigie: The previous panel made the point about local knowledge and local councillors having knowledge of their community. Is that not useful in the planning system?

Alasdair Macleod: The main concern is that planning officers usually refuse permission on planning policy grounds. If local councillors are to hear appeals, they will be familiar with those policies, because they probably approved them. The benefit of having a third party consider the appeal is that they can look afresh at whether the policies have been applied appropriately. It brings somebody else in to oversee the application of policy.

Cathie Craigie: The bill proposes to reduce the standard duration of planning permission from five to three years. Are you concerned about that?

Debbie Harper: Yes. I heard what the previous panel said about the timescales that are associated with larger companies, which must schedule board meetings and so on. It is amazing how quickly three years can pass when a decision must be made about whether to pursue an expensive and time-consuming public inquiry, for example. A fear is that the Scottish Executive or determining bodies could be inundated by applications as a result of the proposal.

We have another concern. At the moment, when permission nears the end of its duration, an application can be made to vary conditions that are associated with time. We saw no opportunity to do that in the bill.

Maf Smith: The previous panel talked about the related issue of section 75 agreements and we share its concerns. Such agreements can take a long time to reach, from the initial resolution to consent. That can eat substantially into the duration of permission. We would like more focus to be placed on ways of streamlining section 75 agreements, because agreements have many standard terms and authorities have good practice, for example. Some matters could be pre-agreed. I do not suggest presupposing that consent would be given, but non-contentious issues could be got out of the way.

The witnesses from the housebuilding sector talked about timescales and we have similar issues. For example, grid applications, dealing with other statutory consultees, site access and landowner agreements might stop a developer building within the given timescale, even with the best will in the world. Therefore, we would like to ensure flexibility to prevent the bad situation in which a scheme that is deemed acceptable cannot proceed because other parties have prevented its construction from starting within the given period.

Harry Malyon: Is there a case for giving further guidance, perhaps in the form of a PAN, to apply in situations in which a major development might be at the mercy of infrastructure providers? In such circumstances, the guidance might be that local authorities can vary the proposed three-year duration at the applicant's request, if he can show reason for varying the duration, or that the duration of planning permission should be different. One size does not fit all.

Cathie Craigie: I think that the bill allows for that, but I cannot put my hand on the relevant provision at the moment. Do you understand communities' concerns? A community might hope to see houses or development but instead have a building site for a long period. Do you understand the Executive's thinking in reducing the time, to meet community interests?

Maf Smith: Yes. I emphasise Harry Malyon's point. We would like clearer guidance about how a local authority might change the duration, which is unclear. We are concerned that planning permission might become unusable and that, when a developer reapplied after time, it would be denied permission, so all the good work that had gone on and the consensus that a scheme should proceed would be taken away. Clarity about how to change the duration for major projects would be useful and helpful.

Alasdair Macleod: One of the main features that we want is increased confidence in and certainty from the planning system. One major issue that faces us is the length of time that is taken to make grid connections. Reducing the period of consent to three years would not deliver confidence and certainty for investors when we face lengthy waits for grid connections.

13:00

Cathie Craigie: Is your view based on how the system currently operates?

Alasdair Macleod: I was giving a specific example, but I endorse the comments that were made about the time that it takes to negotiate section 75 agreements and to discharge conditions. After consent is granted for a renewables project, particularly for a wind farm development, there remains a lead-in time because issues to do with land, legal agreements and engineering must all be approved after consent is granted. A three-year timescale would be quite tight.

Harry Malyon: We are taking forward a development for which consent was secured not by us but by a developer who could not progress the project. The developer's application had gone to appeal and the reporter had imposed a condition that within three years the turbines must be built, in operation and connected to the grid. It had quickly become clear that although the turbines could be built, the grid connection could not be made available within three years. The reporter had further required that if the turbines were not connected to the grid within three years, the development must be dismantled and the site restored to its pre-development state. We were fortunate because the local authority approved an application to vary the conditions. If the local authority had not done that, a condition that might have seemed reasonable and appropriate when it was imposed would not have been met as a result of the actions of a third party.

The Convener: The bill would replace section 75 agreements with a system of unilateral obligations. What impact would such a system have on the renewables industry?

Harry Malyon: We are used to section 75 agreements and we are happy with the obligations that are contained in such agreements, which relate to matters such as restoration, non-interference with television and radio transmission and habitat and environmental monitoring. If unilateral obligations work in a similar way, there is no reason why they should cause us problems.

Debbie Harper: I agree. I understand that such obligations have been incorporated effectively into the English system. When planning authorities,

developers and communities cannot come to an agreement, the approach offers a mechanism whereby developers can offer to take action to meet another party's concerns.

Maf Smith: The white paper, "Modernising the Planning System", contains proposals for processing agreements, which are not mentioned in the bill but would be useful, for example when developers discuss with statutory consultees or local authorities the issues that need to be scoped in an application. It is frustrating that statutory consultees often do not take scoping seriously or send clear signals about the further information that they seek from developers. Such issues can delay front-end work for developers.

We support the principle of good neighbour agreements, which are mentioned in the bill. The renewables development industry has good experience of such agreements. However, there is a lack of clarity in the bill about good neighbour agreements, which are intended to aid communication but could go further. We foresee a situation in which a developer could not secure a determination unless they had entered into a good neighbour agreement.

Two questions arise from that. First, if a community asks for things to be included in the agreement but the developer considers the request vexatious, how will the issue be resolved? Secondly, what will happen if the community proposes things that conflict with the planning conditions that the local authority has set? How will the developer deal with that? Obviously, they cannot meet conflicting obligations. The bill is unhelpful because it is trying to do two things at once. We seek clarity on the matter.

The Convener: Mr Smith, you have moved us on to the issue of good neighbour agreements. I welcome your support for them, but I note from Scottish Power's written submission that it is less supportive of them. Ms Harper, will you tell us why Scottish Power believes that good neighbour agreements are unnecessary?

Debbie Harper: To clarify, we state in our written submission:

"Whilst we are supportive in principle, we do not support the detail of the proposals."

Our concerns are similar to those that Maf Smith outlined. Who will agree the detail of a good neighbour agreement? Will it conflict with the essence of the planning consent or the recommendation for approval? Who will enforce the agreement? We do not think that the answers are covered in the bill and we seek clarification of how the system will work in practice.

The Convener: In your written evidence you say that there is no statutory need for good neighbour agreements because they will duplicate existing arrangements. Do you accept that, if we provide a statutory framework, all developers will follow the good lead that Scottish Power has set? That will ensure that other communities benefit from the good practice that has been established by Scottish Power.

Mr Home Robertson: That is another trick question.

Debbie Harper: In our submission we mention a community benefit scheme in Argyll and Bute. In that example, we work in an environment that is similar to good neighbour agreements, but the administrative mechanisms are slightly different. The principle of good neighbour agreements is fine, but we are concerned about the logistics. I agree that, if other communities can benefit from such things, that is good.

Alasdair Macleod: I endorse what Debbie Harper said. The renewables industry has a good track record of engaging with the community before, during and after construction. Last year, we had an open day at our wind farm site at Ardrossan and 1,000 people came to the site to see what was happening. They were enthused by the development and we continue to work with the local community. There is commitment to engage with the community. My point is that the planning authority should have a clear role in discharging conditions and that the community's role needs to be clarified.

Christine Grahame: I apologise for having to leave the meeting earlier.

In your submission, you mention the removal of the applicant's right to decide the format of an appeal. Similarly, you are concerned about the proposed restriction on the introduction of new material at appeal. Do you want to add any comments that are not included in your written evidence?

Debbie Harper: Our main point is that the majority of the projects that we are involved in are environmental impact assessment projects and information often emerges between the request for written submissions and the determination of the appeal. For example, concerns might be raised about birds and further monitoring might be done—

Christine Grahame: Otters.

Debbie Harper: Yes. It could be otters.

Christine Grahame: I was listening. That was the highlight of the day.

Debbie Harper: There is an advantage in people being able to introduce fresh evidence as long as it is associated with the original application.

Christine Grahame: So you would resist what we have at the moment, which is—

Debbie Harper: At the moment, it is particularly tight.

Christine Grahame: At present, an appeal could be running and a new application could be going through. I think that the Faculty of Advocates mentioned that.

Debbie Harper: In our evidence, we suggested that, with regard to an appeal and any impending inquiry, there should be some flexibility about what can be discussed.

Alasdair Macleod: One solution might be to require the submission of supplementary environmental information at a certain time during the appeal process. That tends to happen at the moment. The reason why there is a requirement to submit the supplementary information is that there is a time delay between the original EIA being submitted and a decision being taken whereby modifications are made and new information comes forward. In an appeal situation, it is appropriate that the reporter and the ministers have all the environmental information before them.

Christine Grahame: The issue of changing circumstances is already covered, is it not? If the matter could not have been raised before that time, it can be raised at that point.

Alasdair Macleod: There are concerns that the appeal would consider only the original application. I am not aware that there is a specific provision that supplementary environmental information can be brought forward.

Christine Grahame: The bill says:

"a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate … that the matter could not have been raised before that time".

That seems to cover the concerns that you have about environmental changes, otters or whatever.

Alasdair Macleod: I will look into that.

Euan Robson: You heard our earlier discussion on the question of increased fees and the aspiration for an improved, efficient and streamlined service from planning authorities. Can you give me your views on the acceptability of higher fees and the trade-off that would be required if we were to achieve a swifter process?

Maf Smith: Our views accord with those of the previous panellists, in general. If increased fees brought more certain determination times, that would be helpful. A parallel to that is found in the fee increases that were set last year by the Scottish Executive. The industry supported that because it allowed greater resourcing within the section 36 team at the Scottish Executive. If increased fees do not produce better determination times, however, we would have concerns. We also accord with the view that the issue is to do with not only the local authority's ability, but that of other statutory consultees, to engage with the process within an effective timescale.

Harry Malyon: One of our biggest difficulties is getting statutory consultees to engage in consultation before an application is made. That is particularly important in a situation in which we are happily going down the route of enhanced public and community consultation, prior to application.

In relation to technical matters to do with an application, the community might look to Scottish Natural Heritage or SEPA to give them some technical leadership about the responses that they will make. My difficulty is that a fee increase does not necessarily allow an increase in the resources that are available to the various statutory consultees, from whom we are expecting more. Many of the delays in the determination of applications derive from an understandable lack of resource on the part of statutory consultees, who tend to retreat into a position in which they seek more information rather than spending time and resources trying to determine the matter at hand.

Debbie Harper: In the white paper, a processing agreement was suggested as a means of getting more efficiency into the determination of an application. We saw that as quite innovative. If that could be done, with the agreement of the statutory consultees, in relation to meeting timescales for feedback to the determining authorities and so on, that could be a useful tool for making the system more efficient.

13:15

Euan Robson: Finally, there is the question of redress if the system breaks down: if higher fees have been paid, but there is no change in performance or it is poorer. What form might such redress take? Should it be applied to some of the statutory consultees?

Harry Malyon: We are already in a position where, if a particular party at appeal is seen as having been unreasonable, costs can be awarded against that party. I suspect that that might be the fundamental safety net for the redress. It is difficult to imagine a statute that could actually determine effectively how hard people have worked to determine an application. One just has to hope that increased provision of financial resources will enable local authorities, and possibly statutory consultees, to take up the game and fulfil their responsibility. I do not know that we would have

any specific proposals for refund of fees, because if delay occurs it can be difficult to decide whose fault it is.

Alasdair Macleod: I would encourage more thought to be given to the concept of processing agreements, which Debbie Harper mentioned. That will focus local authorities' interaction with statutory consultees, because if they have signed up to a processing agreement they will want to get a certain level of service from the statutory consultees to enable them to fulfil the agreement.

The Convener: Earlier, you agreed that, in a modernised planning system, there was a need for proper community involvement and consultation. Based on your experiences, what do you think would constitute effective communication, consultation and involvement for communities?

Debbie Harper: It is difficult to make a sweeping generalisation about that. If every opportunity is given for involvement between the applicant and the communities, the important thing is to ensure that the outcome of that involvement can be incorporated into the development of a project. There are projects where Scottish Power has conducted various levels of consultation—at the scoping stage, at the outset of the project and later on, to show how the project has moved on since the initial stage. Sometimes, things happen during the determination of the application that mean that we have to go back again and tell people how the project has changed. You have to ensure that whatever you get from a consultation is effectively incorporated into your project.

Harry Malyon: On Monday, I was speaking at Our Dynamic Earth, at the Holyrood conference on community engagement, talking about a plan that we are trying to put in place to engage with the new PAN on community engagement. That will take the form of a practical example of community engagement on a project where we are going to go further than we normally go. In fact, we shall probably go even further than we would expect to go in the fullness of time, to test which methods of community engagement work and which do not.

On the scheme in question, there will be a number of leaflet drops with return postcards. There will be the usual net consultation, but in addition we will employ staff to select a group of people to come in to help at the design stage for the application. We will present them with the envelope within which we wish to site the project and the baseline constraints that we have identified through baseline surveys on matters such as ecology, noise and electromagnetic interference with Ministry of Defence activity. We will lay out the choices for access and ask the people which they feel would be the best. We will identify landscape viewpoints and ask which are the key ones around which they wish the wind farm to be designed. We will then use a computer model of what the development might look like and ask the people to place turbines within the envelope and consider how that would work as a design. I do not know how well that process will work. A similar process worked quite well in Caithness for an archaeologically constrained site. I asked the local archaeological trust what the key issues were and engaged with it in the design process.

To an extent, consultation has to give people influence over the shape of developments, rather than just allow them to comment on information that they are given. I hope that the process that I have described will work. We are in touch with the Executive's planning division on the PAN that it is drafting and it seems to be interested in our proposals. The process is in no way dissimilar to what other developers propose, but I hope that it will be of interest.

Maf Smith: To put the question another way, we could ask how we will know if there has been sufficient engagement. The process that has just been outlined is an example of the approach that developers hope to take. The bill and the PAN on community engagement are encouraging active involvement and community engagement. For the renewables industry, the process will be successful if people's expectation of what a development will be like is the same as their feeling about the end result. In assessing the wind schemes to date, the Scottish Executive has surveyed attitudes to wind farms among people who live near them, who are best placed to say whether they are good or bad. Prior and subsequent to developments, people were asked what they thought of them. The surveys found clearly that the major concerns that are raised prior to developments usually fall away post-development. People realise that the development is acceptable and that the noise, traffic and construction were not really major concerns.

That suggests that people do not always understand proposed developments. Effective communication could, one hopes, help to improve that understanding. Indeed, the Executive's study found that people actually became supporters of schemes and felt that they improved the environment. Most people who were surveyed within a 20-mile radius of schemes said that they would support the extension of the schemes. When such surveys are done in future, we would like the results to show low levels of concern prior to development and matching low levels of concern once the developments are in place.

Alasdair Macleod: One criticism that communities often make of the planning system is that, when community organisations or individuals write letters of objection to local authorities, they

either do not hear anything back, or they get a bland acknowledgement letter. It is not clear how people's concerns are taken into account in the planning system, primarily by the local authority.

One way of improving the system is to get people to explain why a scheme has been modified in order to take an issue into account or to give reasons why a proposal has not been agreed to, which we certainly do. If local authorities are charged with the task of engaging with communities, responding to people and giving clear reasons for their decisions, the system will be made more transparent and people will have a clearer understanding of where a third party's objection sits in the planning system.

The Convener: Involving communities in the planning process so that they are not only informed but feel part of the process will go some way towards rebuilding confidence. However, the committee has heard evidence from people who have suggested that the bill will not go far enough and that only the provision of a limited third-party right of appeal will give communities genuine confidence in the planning system. Those people have suggested that communities deserve that right for social justice reasons and that they should be treated as equitably as developers are. Do you agree with them? Is a third-party right of appeal necessary?

Alasdair Macleod: I will again comment on the Irish planning system. I mentioned the Irish Planning and Development (Strategic Infrastructure) Bill 2006. One reason for introducing that bill was to respond to how third-party rights of appeal in major infrastructure projects are slowing down the Irish planning process. Under the current system, 50 to 60 per cent of all wind farm applications are subject to appeals. The new bill proposes to remove third-party rights of appeal for such developments. People in the Republic of Ireland therefore recognise that third-party rights of appeal can lead to an unresponsive planning system.

Maf Smith: There will be less involvement and more national decision making in Ireland as a result of what it has gone through. Our view is that a third-party right of appeal would bog things down. We know from the Irish experience that most wind schemes that attract criticism and campaigns can be subject to a third-party right of appeal whether or not there are any reasons to appeal.

A key issue is that a third-party right of appeal would come after the point at which it would necessarily be useable and that having such a process presupposes that developments are either good or bad. Developments are usually good, but improving them is the key and objections can often be removed. Alasdair Macleod talked about what people object to. Often, people object to elements of an application rather than the entire application. The process must focus on how to resolve such concerns.

In practice, a third-party right of appeal would be used by single-issue groups. That presupposes that there will be one unacceptable issue in an application for a project. In reality, local planning authorities try to weigh several issues and decide what is appropriate and acceptable on balance. With a third-party right of appeal, that balance will be removed and one issue will be focused on. As developers, we think that the key is to front-end the process to create a balance in order to proceed, and we think that local authorities are best placed to make a balanced assessment.

Harry Malyon: The bill aims to build trust between the developer and the community, and we are looking for something that is two-way. We are looking to build trust through the bill's process of initial consultation, pre-application consultation and through a strong local authority view. Then, where it is appropriate, the Scottish ministers can call in an application to represent the interests of third-parties, where statutory consultees see it as inappropriate or, if the development is refused for reasons that we disagree with, to allow us to appeal that decision. The Scottish ministers then make the decision.

I do not believe that it would build trust between communities and developers if one individual or pressure group could initiate a procedure that would stymie a development without there necessarily being a good reason for doing so. That would not build trust between communities and developers, as the views of the individual or pressure group might not necessarily represent the community's views or the wider views in the country.

The Convener: That concludes members' questions. I thank the witnesses for coming before the committee. If you think that there are any issues that the committee has not covered, please do not hesitate to contact us in writing about them.

That concludes the meeting.

Meeting closed at 13:31.

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