

COMMUNITIES COMMITTEE

Wednesday 8 March 2006

Session 2

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COMMUNITIES COMMITTEE

8th 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:

Anna Barton (Cairngorms National Park Authority)

Petra Biberbach (Planning Aid for Scotland)

Jean Charsley (Hillhead Community Council)

Ann Coleman (Greengairs Community Council)

Adam Gaines (Disability Rights Commission)

Stuart Hashagen (Scottish Community Development Centre)

Deryck Irving (Greenspace Scotland)

Douglas Murray (Association of Scottish Community Councils)

Roger Sidaway (Scottish Mediation Network)

Harald Tobermann (Pilrig Residents Association)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Wednesday 8 March 2006

[THE CONVENER *opened the meeting at 09:31*]

Planning etc (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): I convene the eighth meeting of the Communities Committee in 2006. I remind all those present that mobile phones should be turned off. I have received apologies from Scott Barrie MSP, who is unable to be at committee today. I should also explain that Mary Scanlon MSP has been delayed; she hopes to be with us around 10 am. We are joined by Sandra White MSP, who is substituting for Tricia Marwick MSP.

The first item on our agenda today is our consideration of the Planning etc (Scotland) Bill at stage 1. The committee will hear evidence in a round-table setting from a panel of witnesses on the theme of public involvement. I welcome the panel. I ask them to introduce themselves briefly and to say which organisation they are representing at committee today. I start with Ann Coleman.

Ann Coleman (Greengairs Community Council): I represent Greengairs community council and Greengairs environmental forum.

Harald Tobermann (Pilrig Residents Association): Good morning. I represent the Pilrig residents association, but only as its acting chairman. We had an annual general meeting on Monday and we have not yet sorted out our new committee. I have lived in Pilrig for the past 12 years and in Scotland for some 22 years.

Douglas Murray (Association of Scottish Community Councils): I am the secretary of the Association of Scottish Community Councils, which is a voluntary post. I am also the chair of my local community council in Angus.

Jean Charsley (Hillhead Community Council): I represent Hillhead community council, which is an urban community council in Glasgow. Subject to the council's comments, I write our planning objections and represent them at public inquiries. I have also been networking on urban responses to the bill.

Roger Sidaway (Scottish Mediation Network): I am a board member of the Scottish Mediation Network, which I represent today. I chair its environment and planning initiative. I am a trained

environmental mediator and I have also trained in public participation. I teach a course in public participation at the University of Edinburgh and I have written a book on the subject.

Anna Barton (Cairngorms National Park Authority): I am under contract to the Cairngorms National Park Authority to act as its community liaison co-ordinator with regard to public involvement in the local plan.

Stuart Hashagen (Scottish Community Development Centre): I am from the Scottish Community Development Centre, which is a partnership between the University of Glasgow and the Community Development Foundation. We are based in Glasgow.

Petra Biberbach (Planning Aid for Scotland): I am the executive director of Planning Aid for Scotland.

Deryck Irving (Greenspace Scotland): I am the senior development officer at Greenspace Scotland.

Adam Gaines (Disability Rights Commission): I am the Scottish director of the Disability Rights Commission. I also represent the equalities co-ordinating group.

The Convener: Thank you. I thank all members of the panel for attending the committee this morning. Before we start, I thought that it might be helpful if I were to explain how we hope to manage this morning's round-table event.

As I am sure all panel members are aware, the Scottish Executive has stated that one of the key objectives in reforming the planning system is to give local people better opportunities to participate in the decisions that affect them. The objective of this morning's session is to discuss the ways in which that can be done. In order to promote discussion, I will ask a limited number of key questions on the issue of public involvement in the planning process.

I know that some of the witnesses have raised in their written submissions other issues that relate to our consideration of the Planning etc (Scotland) Bill. The committee will reflect on the submissions, but we would be grateful if we could concentrate today on the issues that the committee has raised. If there are other matters in the bill that witnesses think have not been covered today, we hope that they will send us further written information.

Members of the committee will intervene and raise issues with the witnesses, and we hope that they will respond in more detail. The questions will be linked either directly to the proposals contained in the Planning etc (Scotland) Bill or more generally to how we can promote positive public involvement. Given the number of people around the table, I ask everyone to indicate clearly to me

when they would like to speak so that I can bring them in.

The first question is about consultation. The Scottish Executive consulted widely before introducing the bill. Do the organisations represented here feel that they were able to engage in that process and that the consultation was effective?

Ann Coleman: The success of the communities event that was held in the Scottish Parliament in October demonstrated how widely the consultation had reached. I admit that I was absolutely delighted to see so many people there. It is a new concept for the public and it is not always the easiest thing to do, but many people have obviously tried to engage with the process. The more such events there are, the more we will get used to and the better we will get at doing it. The problem was that 80-odd per cent of the people there wanted a third-party right of appeal, which is being denied, so the public will question the validity of the process on that basis. However, the consultation exercise managed to reach a considerable number of people.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The event that was held in the chamber was hosted by the Communities Committee. We would like to hear witnesses' opinion of the Scottish Executive's consultation in the run-up to the publication of the bill and about whether communities were involved at that stage.

Ann Coleman: My point was about the number of people who turned up at the event who had been alerted to it by the Scottish Executive consultation process. That is why there were so many people there.

The Convener: Let us move on to the national planning framework. How do witnesses think that the public and communities should be involved in the development and adoption of the next national planning framework?

Roger Sidaway: There is great difficulty in getting effective public engagement at that level of policy making. There is a need for engagement and a need to develop policy collaboratively, and a range of consensus-building techniques should be used. I am mindful of the kind of events and forums—for so-called policy dialogue—that are conducted in the United States, which are either facilitated or mediated and which have a high technical input. There is obviously an issue about who actually gets to such events and how representative they are of the wider public. Many of us have been following the debates and discussions on the siting of wind farms, for example, and what seems to be lacking is an overall framework on that topic, which means that

the same battle is fought again and again without clear policy guidance.

Petra Biberbach: The national planning framework will be a crucial overarching theme, so it is important that people are brought into the process as early as possible. Planning Aid for Scotland's concern is that the majority of people come into the planning process far too late, partly because of a lack of awareness. The aim of designing—I hope through a planning advice note—a mechanism to allow people to participate as early as possible and with the appropriate tools is opportune. To take up Roger Sidaway's point, it is important that the opportunity is given to get out to the community in a representative way.

Jean Charsley: I endorse that last statement. At a conference on community councils that Glasgow City Council organised, I led a workshop in which a community council member from the east end of Glasgow said that they could not understand any document that was sent to them, even those from the community councils resource centre, which is designed to assist community councils. The person was also unaware of the importance of engaging at an early stage. In general, that lack of awareness leads to a great deal of poor relations between local authorities and communities on authorities' plans. That is partly because communities do not realise that the actions of local authorities and communities are constrained by what has happened earlier in the process. Any measures should take that into account. Local communities should have face-to-face discussion and practical help, in the clearest terms possible, to enable them to understand what is happening and to engage.

The Convener: We will come to the issue of development plans—that will probably be the centre of much of our discussions—so I ask everybody to focus their comments on the national planning framework at present.

Ann Coleman: I see the benefits of the national planning framework, but it will be extremely difficult to achieve public interest at that level and to get people to understand how important it is that they get involved. The contents of the national planning framework will be removed and obscure, so it will be difficult for the public to comment on it. Achieving effective public engagement at that stage will be a difficult task. There will have to be a lot of education about the framework and awareness raising, perhaps through the media. It will need to be made plain to people that, if they do not participate, they will miss points that may matter locally later. Many people will not want to know about the framework. Members know what people are like—they will not bother until the planning application is in front of them, when they will be told that the national planning framework

was discussed months or years ago. However, I see the benefits of having a framework.

Patrick Harvie (Glasgow) (Green): We have heard a range of concerns, all of which the committee has heard on a few occasions. The committee has a bill before it and our job is to consider whether it looks right or needs changes at stage 2. The bill sketches out a process for how the NPF will be produced and approved and what impact it will have on individual developments that might be included in it. The Executive will produce a consultative draft and a final draft will be laid before Parliament, which will have 40 days to pass comment or carry out some kind of process. The bill does not specify any formal process outwith Parliament—for example, there is no examination in public, as happens with similar documents elsewhere in the United Kingdom. If the task of getting people involved early has not been miraculously achieved, people will find that they have less ability to engage than they do at present. For example, they will have less ability than they have at present to have their arguments tested before a public inquiry.

What changes need to be made to the bill if there is to be better engagement and involvement and if people are to trust that the process is fair even if they do not like the result?

09:45

Douglas Murray: We need quite a bit more time before the national planning framework is introduced. We also need more time before the provisions in the bill come into force in about two years' time. We should start trying to raise awareness now of all the aspects—not just the NPF but the city plans, the local development plans and so on.

There is, as you say, no specific detail on how the NPF will come about or on what will happen in the interim period. Substantial elements will be left to secondary legislation or guidance. That point has been made in much of the correspondence that we have received from various groups. We are walking blindly into something about which we have no information.

Patrick Harvie: Will you give us a bit more detail on that? Are there specific things that should be in the bill rather than in guidance or secondary legislation?

Douglas Murray: On the national planning framework, we want to know what will be proposed by way of pre-consultation. We need more specific detail on what that will include. As I state in my written submission, the national planning framework will be guided by a political agenda. We accept that it will come from the planning division, but ministers from whichever

party is in Government will follow what is in their manifesto. There should be more time for dialogue on the issues. The 40-day period that you mentioned seems totally inadequate. The Parliament has many other commitments and will have to devote a great deal of time to the subject. What will be the Parliament's priority?

Patrick Harvie: A point in your written submission that caught my eye is the idea that political parties' manifesto commitments and election results will have a big impact on planning decisions. Political parties often say, "We've been elected so we have a mandate," but that seems to go against the Executive's claim that the bill is about involvement, consultation and participation rather than about decisions being made by one group and imposed on another. In the past, planning decisions have been made by politicians at council level, but it is expected that the Parliament and the Executive will begin to make decisions on individual planning developments under the national planning framework. Where will political commitments fit into that system? Should election results determine planning applications? If not, how can we ensure that the elected body that makes the decision is genuinely accountable to the people whom it represents and not just to the people who voted for it?

Douglas Murray: That is a difficult question. Community councils must try to be as non-political as possible, but we must be aware of all the political implications of the various party manifestos and of election results.

The answer comes back to being aware of what everyone is aiming for. The national planning framework will not be site specific but will lay down strategic objectives that will lead to a basket of developments, as in Greengairs, because some areas are probably more prone to having particular developments than others are.

Rather than hearing, "Right, we're going to start a national planning framework process now," we must be more informed from the outset and at every stage. We need to be involved in the lead-up to such a process so that everyone can provide input, whether that happens during or after an election period. We should not let things stop when a particular event occurs.

Adam Gaines: It helps that the bill and the framework stress the importance of meaningful consultation, because it is important that the framework as a whole can take equalities into account. For some time, planning has been seen to be neutral, so equalities issues have not necessarily been considered. Consultation on the national planning framework will provide an opportunity to take equalities matters into account and to ensure that equalities issues such as disability access or race equality are not only

considered, but built in at the top level, so that when the different stages of the planning process are followed, particularly by the new strategic development planning authorities, a standard of equalities consideration is expected.

I might be leaping ahead slightly to the issue of strategic development planning, but it would help if the new strategic development planning authorities had a duty to have regard to equal opportunities as part of their work. Such a duty is placed on the new regional transport partnerships and on local authorities and it could help if the new planning authorities had to have regard to equal opportunities as part of their work.

Harald Tobermann: I will comment briefly on a point that Patrick Harvie made. Much regional planning paperwork contains far too much detail, especially the more national documents or development plan documents. That is one reason why it is difficult for people to engage. Nobody can look through a big fat document—they do not have the time to do that, even if they want to.

Compared with the detail into which the Parliament has gone and the number of days that it has spent on the tram bills—I do not know the figure—the 40 days for considering the national planning framework is absurd. Of course the trams are important, but they are for Edinburgh. In my view, the decisions about the trams should be made in Edinburgh and should not concern the Parliament very much, but that is another matter.

Planning legislation and the national planning framework should take the form of a constitution—a high-level document with few details that is not prescriptive but which outlines aims and goals that we all want. Elected representatives should agree on the general goals.

The Convener: Several members wish to speak. I think that I have a note of everybody.

Christine Grahame (South of Scotland) (SNP): I have a short question about consulting at parliamentary level on the national planning framework. To an extent, it has been conceded that dealing with the framework in 40 days will be pretty well impossible. Is anybody aware of best practice in other countries that the committee could consider?

Roger Sidaway: I have cited the policy dialogue work that has been carried out in the United States and I can provide more information on that. There is a precedent there.

However, I want to return to the debate between Patrick Harvie and Douglas Murray. In some senses, they are both right. I view the bill as setting out a set of principles. Much of the detail will come through in the supplementary guidance. We should be seeking consistency at different

levels throughout the bill. We are talking about the national planning framework, but some of the same principles are being applied for the development plan process, particularly in relation to public engagement in development plan work.

There is also the suggested obligation to carry out pre-application consultation, under which the developer would provide a consultation statement to enable consultation at a local level to be carried out. If we take that principle and then return to the national planning framework, we should be looking for a similar sort of statement to be drawn up when the framework is being considered. There would be an opportunity to comment on the process and the bill would specify who should be included, who should be excluded, the amount of information to be given and so on.

One of the committee's difficult tasks will be to ensure that there is consistency throughout what is already a long piece of legislation, rather than to add even more detail.

Jean Charsley: I am extremely concerned about what might be included in secondary legislation. If provisions are not in the bill, we have no opportunity to object. Secondary legislation comes along later. Three years after the city plan, we are still waiting for the conservation area assessments, which were supposed to inform planning decisions. Planning advice notes and secondary legislation seem to inform the bill, but in effect they supply an opportunity for omissions, which are of serious concern. The bill will be highly imperfect unless some of the things that people are consigning to secondary legislation are considered much earlier in the process. I would like to say something about consultation later.

Petra Biberbach: To respond to Christine Grahame's question about good practice elsewhere, the Scottish Executive has examined extensively administration of the system in Bavaria, and Planning Aid is examining community engagement there at all levels. We can learn quite a lot. We can look around, but we must be mindful that different countries have their own systems, and their citizens have different opportunities. Whatever we find in other countries, we need to take it with a pinch of salt.

I will return to a point that was made earlier about consultation. The Skeffington report of almost 40 years ago made the planning system extremely open. At all levels, the planning process allows people to engage, so we need to ask why people have not been engaging over the past 40 years. Why is it that, even though the planning system allows people into it more than any other system does, including education, health and transport, engagement has not taken place? That is the question that we ought to be asking ourselves and that I would like to put to the

committee. We know the answers only up to a point.

I go along with what Jean Charsley said about secondary legislation up to a point. As we move into an area of new community engagement, liaison and involvement, we should be mindful that none of us has all the answers. In a way, I would prefer secondary legislation to be used here. To some extent, that is what planning is all about—the detail will be in the secondary legislation. To look at it in another way, if something that was included in the primary legislation did not work, it would take an awful long time to fix it. With secondary legislation, more flexibility is possible.

Stuart Hashagen: I have a couple of comments to make. First, secondary legislation is fine, provided that there is some auditing process to ensure that the engagement actually happens.

Secondly, we should be mindful of the debate that is going on in the regeneration, community planning and health sectors. We need to be clear that we do not want to reinvent systems and procedures that do the same thing as other systems and procedures. I have been involved in health consultations and regeneration. People are suddenly realising that they are asking the same people the same things at the same time. It would be helpful if the different processes were aligned and people recognised that systems and structures are in place that all sectors can use.

10:00

Mr John Home Robertson (East Lothian) (Lab): It is important to emphasise that the 40-day parliamentary procedure, to which references have been made, should not be the whole story. Forty days in Parliament is quite a long time, but the procedure should surely be preceded by a much longer period of public consultation on the national plan.

I want to say something about our fundamental approach. Historically, planning in Scotland has tended to be reactive. There is a wait until somebody comes along with a proposal and then everybody in the locality rallies round and opposes it. Surely the idea behind the national plan is to identify things that need to be done for the whole nation—in respect of transport infrastructure, electricity generation, housing development or whatever—to get people to understand what needs to be done and then to consider ways of delivering in different parts of Scotland. Such an approach will require a complete change in communities' mindsets. Rather than having people wait for developers to come along with proposals to which they will react, the aim will be to build consensus on where to put landfill sites and how to manage them, for example. I have constituency

experience of power station, landfill site and other proposals. Things can be done well where there is a will to do them well. Are your organisations prepared to get involved in a fresh approach? The involvement of organisations such as yours is crucial—if you are not prepared to get involved, we are all wasting our time.

Douglas Murray: The water and sewerage infrastructure is a relevant current issue. People have said for decades that there is a lack of water and sewerage infrastructure. Scottish Water has been scrambling to complete work since 1 January because European directives need to be implemented. It will probably incur penalties if it does not comply. However, I am not aware of its identifying at an early stage what it will do—it will make proposals only at the planning application stage. There appears to be little pre-consultation in that respect.

Petra Biberbach: Around 90 per cent of people who call Planning Aid for Scotland call very late in the process because they are concerned about a development control issue. It is then difficult to identify how to take things further. We often explain how the system works first. The merits of a particular case are not important to Planning Aid; what is important is getting the technicalities of the process across to people. It does not take people long to understand the system—perhaps five to 20 minutes, depending on the person's concern.

We reach only a small minority of people at the moment, but everyone round the table has a duty to engage effectively in the culture change agenda that underpins the bill. The 110 Planning Aid volunteers—all of whom are registered planners—are in the vanguard of the cultural change. Many work full time in local planning authorities or as consultants, but they give their time freely to help people to understand the system better.

We are proactive in engaging with the black and ethnic minority infrastructure and Gypsy Travellers. We are also working for housebuilders to try to enable people to come together. We are doing different pieces of work to identify how cultural change can be achieved and how we can get people back into planning. I see that as Planning Aid's role.

Stuart Hashagen: I want to pick up on what John Home Robertson said. People will get involved in things if they think that it is likely that there will be a return on their investment, but a problem with many consultation exercises is that people are not sure that there will be any change as a result of their investment.

If the message goes out that a debate is taking place on what the national priorities for planning, regeneration and dealing with poverty should be, and if people feel that the debate is real and that

they will be listened to, they will sign up for it. However, if people feel that the debate is tokenistic, they are less likely to sign up for it. If the debate is to be non-tokenistic, a lot of time and energy will have to go into facilitating and supporting it.

Ann Coleman: I agree with much of that. If members of the public are to be encouraged to get out of their armchairs and away from their televisions and to go out to participate at a level that is far removed from their normal experience, they will have to be confident that it will be worth their while. To allow people to participate effectively, we will have to have access to expertise. Getting impartial expertise is a huge problem—issues have to be considered from a genuinely community point of view.

I thought that the document on the national planning framework was brilliant and well put together—but how will the national planning framework decide, for example, on the distribution of waste management facilities, which is my area of experience? Will the framework set up three huge areas in Scotland, each of which will take a third of Scotland's waste, or will each local authority take responsibility for its own waste? That is the kind of issue that members of the public must feel is relevant to them if they are to get involved at an early stage. Telling people that their area might contain one of the three huge waste management facilities, or that such facilities might be more evenly distributed as per the aspirations of the national waste strategy, will be the kind of thing that will get people out.

Deryck Irving: It is evident that the national planning framework is the biggest challenge. The closer that things get to someone's own doorstep, the more they feel the need to engage.

I agree with Roger Sidaway's point about the need for an equivalent to the statement that is required elsewhere in the process. The point was sound, but we need to go further. If issues are highly conceptual and far from people's day-to-day experience, and if those issues are couched in impenetrable language, the process will not work. To get a statement with the right questions in the right language and in the right format, we have to ask what we want communities to contribute at national strategic level. If we do that, we can target the questions and couch them in meaningful terms, so that people can see whether their answers have an impact further down the line.

As a non-planner, I find it hard to see how some of the supplementary papers relate to the bill. They are in a different language. That sort of thing can be important when you go three or four steps further out and get into a community consultation. In a statement approach, you have to be clear

about what you want communities to contribute and why.

Ms Sandra White (Glasgow) (SNP): The word "national" is probably another thing that frightens communities off.

As has been said, the bill will involve a great deal of secondary legislation, and we will not know how things will work until we see that secondary legislation.

Most people would agree that we need to know what will be in the national plan. Roger Sidaway mentioned wind farms, and Ann Coleman mentioned nuclear waste, but we do not yet know what will be in the national plan. Should the contents of the national plan be set down in statute? Communities will be involved in consultation on such issues.

Ann Coleman talked about a strategic plan putting wind farms here, nuclear development there and waste facilities somewhere else. I wonder how easy it will be for people at the table who represent communities to get those communities involved when there are also development plans and other kinds of plans to be considered. Will you have a difficult time in involving communities in the consultation process for a national plan if it is not set out in statute that X amount of time must be given to enable communities to partake in that communication?

Roger Sidaway: Why not ask people? Whose agenda is going to be set? There is a great danger of the agenda being constrained by official perceptions at the national level. We are talking about a lot of things at the same time, which is inevitable. We are talking about culture change and capacity building at the local level through community councils, the kind of work that Anna Barton has been doing, the excellent work that I have heard about in Dumfries and Galloway, and so on. It will take a long time to bring that through, and we will be crashing through the gears.

The main thing is to adopt a set of principles under which we treat people like grown-ups, ask them their views and get them engaged at that stage. We want to get people committed to policy at either the national or the local level to make the subsequent stages much easier. In that way, when it comes to debating an individual application, we are not trying to debate policy at the same time. Policy will have been agreed and we will be considering the merits of the particular case.

Cathie Craigie: For me, what has come out of the discussion is that this will be difficult—Roger Sidaway highlighted that at the beginning—but we need to have a culture change and a fresh approach to involving people. Those are all statements that have been made this morning. Petra Biberbach asked why people have not

engaged in the past; I do not know the answer to that. As part of the culture change, dealing with public engagement and encouraging people to be involved will be less of a planning role and more the role of the experts who come from backgrounds of involving communities. Unless the Executive front loads the process, people will perhaps still not engage.

Petra Biberbach: That is a vital point. We all have a lot of different techniques available for community engagement, from mediation to focus groups and visioning. What is really needed at this stage is awareness. Almost 40 years after the publication of the Skeffington report, the majority of people out there still do not know that there is such a thing as a planning system, despite the fact that we have an open and transparent system. Yes, it is couched in technical language, but that is partly because the process is technical.

We need to have a good look at why the majority of people still do not know about the planning system. What can we do to assist awareness raising? Just going out into the cinemas or going on the radio or television to say that there is a planning system will not engage; something more needs to be done.

I think that, fundamentally, we must move away from the local and individual perspective of planning that stirs people. People say, "I'm only stirred if something happens right next door to me" and that is fine, but we need to see the wider picture—the public gain. Planning is about looking at the wider world and how Scotland overall will function. That is vital, and I think that you have a tremendous job on your hands.

Anna Barton: Not only will it be difficult, but it will take a long time. A few people will participate in the early days, but only when other people see the feedback from that and realise that participation has led to some level of influence will more people join in. Petra Biberbach mentioned people taking an interest only in local developments. People are motivated only by things that affect them immediately, and they perceive that larger-scale proposals or things that are further away from them will affect them only if they are told that they will. Awareness raising is hugely important.

10:15

Harald Tobermann: I will comment briefly on lack of engagement with what I regard as, in principle, a very good planning system, which has existed in Scotland for a long time.

In my view, the reason why people do not engage is that they lack a sense of ownership of their locality. For example, our association was set up in Pilrig where I live precisely because people

lacked a sense of local ownership. We were divided into two electoral wards by one street that went through the centre of the community, whereas we perceived Pilrig as one geographic community. Through our association's work, a sense of ownership has grown up among the 1,200 households in the area.

At the next level up, local authorities have little control of how their finance is raised, so they have no link with their electorate. A real problem is that councils do not seem to act or react and voting does not necessarily change anything at the local level. In addition, local authorities do not have much control if the enforcement side of planning does not work well. If people see no enforcement of planning laws when they just dip their toes in, they will immediately withdraw and another person who could engage with the process will be lost.

The Convener: We will return to the issue of enforcement later. I am grateful for people's comments on the national planning framework, but I am conscious of the time so let us move on to public involvement in the development plan process.

Cathie Craigie touched on the subject of front loading, which is crucial to much that the Executive is attempting to do in the bill. By guaranteeing that consultation on development plans takes place at an early stage, will the bill ensure greater public involvement?

Adam Gaines: The hierarchy of consultation that is set out in the bill is helpful, but a proactive approach will be required to engage different communities and equalities. It is important that when plans are being set out, especially at the pre-consultation stage, consideration is given to how a development is likely to impact on, for instance, older people, disabled people or faith communities. Under the bill, such considerations can be thought of at the start of the process. Potentially, people will need to think about how they engage at an early stage organisations, groups and individuals who might not necessarily think that a particular development plan will impact on them. Otherwise, the opportunity that the bill provides to integrate such issues will be missed.

Deryck Irving: I am not sure that the bill will ensure greater public involvement but it will certainly facilitate such involvement, which is desirable. As I point out in our written submission, the current system assumes in many ways that the only role for local residents is as objectors to a development that has been proposed. Early involvement will at least give people a chance to contribute more creatively. That is a hugely positive step.

However, the bill will ensure greater involvement only if planning authorities use approaches that

are suitable to the relevant communities and interests. That raises a major capacity issue about not just how communities deal with planners and the planning system, but how planners deal with communities. The solution might be to upskill people within the planning system or to create greater contacts with people outwith the planning system who have the skills to assist in the planning process. Links to those who have experience in community planning in health and regeneration will be crucial. One flaw in the bill at present is that it does not refer to any of those linkages but treats the development planning system as very much a separate silo. That is to the detriment of both development planning and the other systems that could benefit from such linkages.

Jean Charsley: I will comment in the light of experience of engaging people with development plans. Three stages are involved in that. First, the people concerned need to read the proposed development plan. However, people have considerable difficulties in doing that, so that is the stage at which they most need help. The second stage involves discussion with the local authorities. Before the local authority prints a final development plan or proposal, it needs to discuss with people how things might be improved from the perspective of the community. Glasgow was very good on that in relation to those communities that had been able to read the plan, but it was not so good in relation to those that had not.

The third stage happens when the plan is published. That is when people see the results of all those consultations and discover that they do not agree with certain elements. That is where a public inquiry is absolutely necessary. The bill downgrades that. Public inquiries were extremely valuable to us. I took 28 objections, one of which was agreed by the reporter. However, the council minimised that because it had already taken actions that would compete with it.

The question of community planning in getting to that stage is problematic. Community planning has not happened in Glasgow yet. There have been two delays of six months and there is no agreement on how consultation could proceed. We are grouped in a huge area for community planning that has distinct needs that do not necessarily correlate with the boundary. The representatives on the community planning partnership are the national health service, which has already made up its mind, housing associations and other bodies, but there are only two community representatives from particular areas. That needs to be looked at again.

The most important thing is that someone must be able to explain clearly which proposals in the

development plan are likely to affect that community.

Ann Coleman: My concern is that planning must come down further towards a local level. Local development plans become hostages to what has been decided in the national planning framework and the strategic development plans. Communities can start off from a position of having to address that.

Communities have always had the right to participate in the structure plans and the local development plans, but they have not done so very vigorously. On this occasion, we have made a submission to the structure plan. We have tried to make the same submission to the local development plan. The problem is that, when we try to put the same thing into the local development plan, we are told that we need to be site specific. I am sorry, but we do not have the expertise to be site specific. Developers have simply sent letters saying, "We think that this area could be used for this development", but our community is being asked to be more specific. There will be a huge need to help the public to participate at that level.

The local plan team has been fantastic but it must remain impartial, which means that it cannot tell us how to be site specific. Our community has lost a lot of trust and confidence in the system and it does not believe anybody; perhaps other communities feel the same. The first hurdle will be getting a community to feel that it is worth while getting involved at any stage. That is especially so when the developers' right to develop land that they own is enshrined in law. Any community input starts from a position of there being a presumption against the community's view, as communities very rarely own the land in question.

Do not get me wrong: I agree that we need development. Scotland is desperate for good, sustainable development. We must get the message across to the public that their input is relevant and has value. I do not know how we will do that and give people all the tools that they will need if they are to participate. We must all take our fair share of everything—the good as well as the bad.

Patrick Harvie: One of the most important ways of ensuring that people see that their input is of value is to make it clear that it changes decisions. You talked about the first hurdle that we have to get over. To extend the metaphor to the point of absurdity, we are not just talking about a series of hurdles; we are talking about a track that goes round in a circle. We are talking about a cycle of planning: keeping development plans up to date on a five-year cycle and keeping that cycle going at every local authority level. My concern is how we ensure that, when people get involved late—

because they see something happening near them or they feel that something will affect them—they do not have such a negative experience as a result of their late involvement, leading them to have even less motivation to get involved when we next come round to the beginning of the cycle. We want people to get involved early, but that does not happen in isolation of other points of the cycle. Is there anything in the bill that might make people less able to affect decisions if they get involved late? If that is the case, what can we do about it?

Roger Sidaway: Going back to the principles of planning, we are trying to change the planning culture from being an adversarial one—with late meetings and so on—to an early and collaborative one, in which there is dialogue between planners, developers and communities and the agenda is not necessarily set by local councils. With respect to Jean Charsley, the system that she described is one that we are trying to get away from. There should be inputs relating to the local issues that should be dealt with in the plan. However, we are working within guidance, frameworks and constraints. How will what is decided at a policy level in the national planning framework be interpreted at the local level? What are the constraints on development? What are our goals? What do we want to achieve? We should look forward to what we want to achieve, rather than looking backward and negatively.

Collaborative techniques, consensus building at the planning stage and mediation have a lot to contribute to the style of working. You asked what happens when things go wrong. That is when we can come in. We could use mediation to sort out quite a lot of the issues at the pre-inquiry stage, so that the inquiry spends less time on such issues and can concentrate on the germane issues. There can be a kind of winnowing out at that stage. That is all part of a fairly complex process; I agree that it will take a long time—my guess would be 10 years—before we get there, but if we think that it is worth it, let us go for it.

Anna Barton: In my work in the Cairngorms national park, in the villages where there had been extremely contentious applications in the previous few years, we had a much higher level of engagement. I spent quite a long time talking to the people who had objected to those applications—as we all know, that is where people normally enter the process—to try to take them one stage earlier, which is the local plan. That has been successful. You can get people to come in at an earlier and earlier stage.

Going back to what I said earlier, people are driven by self-interest. You have to find a way of explaining to people why they should enter the process earlier. You can use people's negative experience. By explaining to people that they have

an opportunity to improve the situation in the future, you may have some level of early success.

Petra Biberbach: Planning Aid for Scotland runs a training programme called planning for people, which is usually centred around areas that are undergoing change, including areas that are affected by the development plan process. We have found that people do not necessarily get hung up about not getting what they wanted, as long as the system is explained to them. One gentleman who came to us recently said that he did not get the outcome he had wanted, but at least he knew why he did not get it. That is often the case.

I agree with Anna Barton's point about people's distrust towards the local planning authority. That needs to be seriously thought about. People are very confrontational when it comes to planning authorities, which leaves local authority planners with low self-esteem. We need to address that. The point was made earlier about getting more resources into local planning authorities—that is vital. The upskilling of planners is also important.

We must remember that the system is plan led and has been so for 40-odd years. We need to return to the plan-led system and make it work properly, so we must bring people in at the earliest opportunities. In England, a statement of community involvement tests properly whether a local planning authority is involving a diverse range of people. Perhaps we should consider such a measure.

10:30

Jean Charsley: Timing is a major problem for cities, because city plans must deal with several localities, all of which have different problems, and the people in those localities alert the local authority to problems that it has not foreseen. Timing is crucial. The Executive tends to equate efficiency with speed, but that does not necessarily generate good outcomes. For example, before us are two major planning applications, one of which is contrary to the local plan. One application is four times the size of the local plan—I have four large folders on it—and is accompanied by a slick document on socioeconomic aspects and another document on transport. A planning consultant produced that documentation and we will need to take advice on aspects of it. We also have a document on the Clyde link from the council, which is accompanied by two large documents plus plans.

At the same time, we are supposed to comment on the revision of the city plan within six weeks of its issue, but we are three weeks on and we have not seen it. We must also represent at licensing boards people in our community whose English is

not very good, so we have other work, apart from our jobs and other applications. Being so prescriptive about time is not conducive to local involvement.

Douglas Murray: Patrick Harvie talked about disincentives to engagement. Six or seven years ago, I was involved in a public local inquiry, to which I submitted about 20 to 25 objections. I managed to have one word changed. I also ensured that an area of ground that was identified for housing development included provision for extra play facilities and car parking, because of the area's confines. An application for that small housing development was made two or three years ago. After much haggling, the local authority cut more or less all the green space and the requirements to improve transport, so that all that remained was a square. That is a practical example of a disincentive.

I made points to that inquiry about transport and traffic problems in the town in which I stay. The council said that it saw no problem and that there was no need to change anything. Seven years on, the council is implementing some of the changes that were requested, because of the problems. It has taken the council seven years to realise that those issues should be addressed.

Adam Gaines: On culture change, closer working between planning authorities and the building regulations staff of local authorities would assist the consultation of individuals. At times, building regulations and building decisions can have a direct impact on whether a person with a disability can access a building, but planning decisions about a whole development may determine whether an individual can access the community. There are good examples of planning and building services working more closely, but further joint working would help, so that individuals and disabled people are not consulted twice or at the wrong stage of the process, when decisions about individual buildings have been made.

Euan Robson (Roxburgh and Berwickshire) (LD): Do you have examples of places where buildings are accessible but the community is not?

Adam Gaines: There are a number of such examples. Accessible buildings have been built without consideration having been given to transport connections, which have had to be fitted in later, or without consideration having been given to external access, such as the pavement. Closer working between builders and planners would be helpful in that context. The Scottish Executive recently published a good planning advice note on inclusive design, which is helping people to make progress on such matters and which we hope will be used more. Perhaps the advice could be made statutory.

The Convener: Patrick Harvie asked a legitimate question about how we encourage communities to engage and Douglas Murray responded by telling us about his experiences. Will the Executive's proposed approach of front loading the system and allowing for positive engagement around developments—if it is done properly—limit objections because communities will accept that particular developments are needed? Will people engage less in the planning process because they will have been engaged from the outset in envisaging how their communities will develop, the services that will be needed and the places where expansion will be necessary? Will the approach address the serious problem of consultation fatigue and keep people engaged? How can we ensure that the bill delivers in that regard?

Stuart Hashagen: Those are important matters. We are talking about the difference between consultation and participation. In a consultation, people go to communities, ask questions, get responses and then return to the office and make a decision. The participatory approach means that people say, "Here are issues that we want to discuss. After we have debated those issues we might come up with solutions that meet the needs of all parties." Everyone approaches the discussion with a fairly open agenda and the solutions that people come up with might be different from what was expected. That might mean that people feel involved in the process and remain involved, instead of going away and then coming back with an objection.

There are opportunities for communities to get involved in the development and delivery of services, rather than just being consulted on developments. For example, housing associations have involved communities in the development of maintenance teams.

Mary Scanlon (Highlands and Islands) (Con): I apologise for arriving late—I gave advance notice.

The evidence from Ann Coleman, Douglas Murray and Jean Charsley took me back to the event that was held in Parliament at the end of October, at which many community groups described bad experiences and their loss of trust and confidence in the planning authorities.

In our many meetings with directors and conveners of planning and with councillors, I have been struck that those people acknowledge that they need to change a culture that is adversarial because planning authorities are underresourced and underconfident. They realise that the culture must change if they are to meet the bill's requirements. Roger Sidaway said that it would take 10 years to effect a change in culture, but if the planning authorities do as they say they will

do—I take at face value the commitment that they gave to the committee—how easy will it be for community groups to put the past behind them and to engage more positively?

Ann Coleman: Give us 20 years, not 10. To be honest, that is the bottom line. It will take at least 10 years to build respect. The problem is that because of experience, we do not trust statements that there will be a culture change if that change is not backed up by enforcement to ensure public accountability. Will involvement be only a tick-the-box exercise? Petra Biberbach mentioned the community involvement statement that is used down south; there are complaints about that being nothing more than a tick-the-box exercise.

You also mentioned what some developers say about the culture change, but they are also still—

Mary Scanlon: I am sorry, I must correct you on that. I did not mention developers; I talked about directors of planning and conveners of planning committees.

Ann Coleman: Right. I was going to say that some developers have said that they will still push the limits—that is the culture of the industry. We want a healthy economy; we need employment and developers need to make money and be profitable to keep going, so we must also consider the matter from their point of view, but if the system allows some developers to get away with pushing the limits and if they become more profitable than those which play by the rules, which will win out? That has been a huge part of the problem in Greengairs. We can pass the buck to developers or others all we like, but the system must ensure that there are penalties when things are not done correctly, and that there are rewards for people who engage in the culture change. The change has to be supported all the way through, so penalties and rewards will be crucial.

The Convener: We will return to enforcement and good neighbour agreements later on.

Petra Biberbach: We were asked whether we welcome the bill; Planning Aid for Scotland does. Anything that improves efficiency as well as widening inclusion must be welcomed.

It is important that we all engage in the culture change. It is not only for the development industry or the planning authorities; it is for all of us. When we engage, we must do it transparently and in a spirit of wanting to make the system work. One of the keys to making it work will be transparency about when and how decisions are made, which is resource intensive and extremely important. The resources that will be necessary to implement the bill will be considerable if we are serious about culture change.

I do not agree that we can put a number on how long culture change will take and say whether it

will take five, 10 or 20 years. We cannot wait to change the system; we must change it, however long it takes. Culture change is on-going.

Deryck Irving: There are different levels of culture change, different audiences for it and different stages to it. It will be quicker to change the culture within the planning system than it will be to change the culture of distrust in the communities. It could well be the case that, in two or three years, the planning system will operate better, but it will take five or six years' worth of seeing whether provisions that are in the bill come to fruition and whether it changes things before people start to believe that their input is real. That is simply how development works.

Petra Biberbach is right that the way in which the system operates needs to be changed quickly and relatively soon, but individual communities will gain trust at different speeds because they will see things differently. Unfortunately, we cannot assume that it will all happen overnight.

Ms White: We certainly need culture change, but it must be two-way change; it cannot be one way. It is coming across that the bill proposes a one-way system with no checks and balances. We will come on to that later.

Developers, planners and communities have all agreed that consultation—or participation, as Stuart Hashagen suggested—at the earliest possible moment is the best way forward. However, if we have a national planning framework that involves consultation, and if people in communities object to a plan that goes ahead anyway, will those people still feel that they want to get involved in development plans when they have already been involved in the national planning framework consultation? There are many good things in the Planning etc (Scotland) Bill, but I worry that it might lead to people being overburdened with consultations, and that it might contain nothing sustainable for people who object to plans. Do you feel that without checks and balances you might be consulted to death but end up with nothing?

10:45

Douglas Murray: I accept that point. We all have to change the way we work—it is a continuing process.

On national consultation, the Association of Scottish Community Councils has recently finished dealing with the community council consultation paper. One comment that has come back to us is that it is a discussion paper and not a consultation paper, so there are clearly issues over the wording that has been used. Individual community councils in smaller areas have said that the issues in the paper were more relevant to national bodies.

National planning organisations such as Planning Aid, the ASCC and other bodies such as residents associations will probably take the brunt of any national consultations.

Ms White: If you have been consulted as part of the national planning framework, and if your objections have been overruled, would your organisation be likely to get involved in local development plans? How will you be affected if you are being consulted to death but have no checks and balances at the end?

The Convener: I think that the point that Ms White is trying to make is that she is concerned that people will be overconsulted and constantly burdened with engaging in the process, which could make them feel a little disheartened.

Anna Barton: On what happens when people object but their objections are not taken into account—in other words, when they do not get what they want—we have to get away completely from the present approach. We should not put something in front of people so that they can simply say, “Yes, that’s fine”—although that is unlikely, because the people who come out are usually the ones who object. We should have a discussion before we reach that stage. Obviously, in real life, there will be times when people feel that they have not got what they wanted. That need not happen often, as long as people no longer think of the process in terms of their being offered something to which they object, but instead think of it in terms of their being able to take part in a working dialogue.

The bill has had difficulties because despite there having been a lot of consultation, something that many people wanted is not in the bill. People are not fully aware of why it is not in the bill, so they are saying, “This is pointless—we asked for a specific thing and we not only don’t have it but we haven’t been told clearly why not.” A lot of work has to be done to address such concerns.

Mr Home Robertson: Let me try to be uncharacteristically provocative. Around this table, there is a perception that community groups and community councils might be more representative and more sensitive than local authorities. That is fine, but let us consider a hypothetical situation. A local authority and planners have identified a need for affordable rented housing in their development plan. Owner-occupiers in the area who are worried about the value of their houses and who are in controlling positions on a residents association or the community council say, “Oh dear me! We don’t want that kind of development in our part of the world.” They then make representations on behalf of the community to bomb out the idea. How can we ensure that minority groups, deprived groups and people with specific needs are represented in the system, and that professionals and people

who are well-connected do not have a power of veto? As representatives of the public, committee members are worried about that.

Petra Biberbach: Before I answer that, I have a comment on Sandra White’s question. People accept decisions as long as they know why they have been made, which takes us back to transparency. It is often assumed that the community is one entity, but communities can be divided and have many different aims. At present, we are exploring issues to do with Gypsy Traveller sites. We are working with the Scottish Gypsy Traveller Association to broker a better scenario that will allow people to talk to one another. Gypsy Travellers need sites that provide access to schooling and other services, but that can be difficult because many people still do not want a Traveller site next to their homes. The bill will facilitate greater dialogue, but we do not have the answers yet.

Jean Charsley: A factor that has been ignored is to do with local councils. For example, we support the involvement of Travellers in a local community, but a Traveller site in the area was moved right down the Clyde because a prestigious development was planned.

Another aspect is consultation. Local communities and local people think that councils are corrupt—I did not want to use that word, but I have used it. I simply repeat what has been said—although perhaps not publicly—so I hope that nobody will take issue with it. Councils clearly take decisions in private before certain issues get to the committee stage.

The way consultations are carried out is another problem, because the information is often inadequate or is presented from a particular point of view. The construction of questionnaires and the analysis and presentation of the results are real problems. Responses are often tabulated using categories such as traffic, housing and access, but the substance of the responses—the crucial part—is not included, so the information that is given can be misleading. For instance, a community in East Kilbride was told that sheltered housing was to be built but, when the fencing was taken down, they found a pub.

Developers sometimes claim to have consulted a community when they have not. In Hillhead, we were said to have been consulted on a proposed American diner, but we had not heard of it before the planning application was put in. In Glasgow, an application for a cement grinder for Glasgow harbour stated that the community had been consulted, but the councillor pointed out that no community council existed in the area. The committee must consider the process of discussion and what can be done to improve how local councils make decisions so that communities feel that their input is valuable.

Harald Tobermann: I will answer John Home Robertson's question.

Mr Home Robertson: I hoped that somebody would.

Harald Tobermann: I make it clear that, from my point of view a person is not necessarily right just because he or she objects. In fact, such people will often not be right, because "right" does not always mean "in the interests of the person who objects". No doubt such people are right in their terms, but right, as I understand it, has a bigger sense. The layer in which decisions are made about right or wrong in that bigger sense is that of local elected representatives.

There is no argument; the present system could work much better. The mechanism exists to allow that and the bill is probably not the vehicle to strengthen that mechanism, but that is where the issue is. I would welcome my local elected representatives' doing much of the work that I do at present. They should scrutinise local development issues on my behalf—I pay them to do that. I should simply nod, or every now and then write a letter to them, and then vote for them or for somebody else every few years. We have a mechanism for negotiating the conflicts that inevitably arise. When some people want a development but others do not, our elected representatives must ultimately resolve the conflict.

Adam Gaines: Obviously, the point about the involvement of minority groups is important from an equalities perspective. The critical point is the extent to which that involvement is considered at the beginning of the process rather than later on. Local authorities have certain duties in relation to disability and race issues and they have to develop schemes to consult people, but it would be helpful if, beyond that, planning authorities had a duty to have regard to equal opportunities at the beginning of the process. That could apply to issues such as community safety, which impacts across a range of interests.

A welcome provision in the bill is the requirement for developers to produce statements on access for disabled people. Developers will have to set out at an early stage the access implications of the development. The requirement will be set out in secondary legislation, however, and it would be useful to have further information on how it will work.

Cathie Craigie: Jean Charsley said that there is a general feeling that local elected representatives in the system might be corrupt. I would not—

Jean Charsley: I did not mean that they are corrupt.

Cathie Craigie: I am pleased that you clarified that. If anyone thinks that there is such corruption,

there is a mechanism available to them. If communities think that there is corruption, they should be going to the police.

I will pick up on a point that Stuart Hashagen made earlier: the important issue is the difference between consultation and real participation. Will the bill allow real participation in development plans?

Deryck Irving: That is an interesting question. The point that Cathie Craigie makes is the answer that I was going to give to an earlier question. The bill refers to consultation statements at the strategic development plan stage. That mechanism starts to get around some of John Home Robertson's issues about who has the power of feedback of information. If the consultation statement is correct, it should hit all the relevant audiences in all the relevant communities and not just the obvious starting points.

My answer to Cathie Craigie's question is that the bill does not allow real participation. It mentions consultation that is based on an assessment of the main issues that are identified by the planning authority. There is a danger that that will involve the planning authority saying, "Here's our checklist—tell us whether you agree or disagree." It will be possible to use the narrowest of approaches to consultation and people will be given exactly what they think is already happening—that is, they will think that the decision has been made already and that they are being asked simply to rubber-stamp it. We need more than consultation statements. The system has to be about engagement and participation and there has to be a dialogue. The planning authority should say, "These are some of the issues that we think are important. How should we take them forward? What have we missed?" That should be the starting point.

The spirit of the bill is in the right direction, but some of the wording will allow people to retreat into their comfort zones and to continue doing what they are already doing less well than they should.

Roger Sidaway: Deryck Irving makes a telling point. In the terminology that is being developed, there is too much mention of consultation and not enough mention of participation, community engagement and consensus building. Rather than taking over the role of local authorities, the bill is a way of ensuring that local authorities work more effectively with communities. It is also a way of increasing their accountability.

It would be wrong to be too prescriptive about the methods and techniques that we use. We need to take a more philosophical approach, rather than just say, "This is the latest whizz-bang

technique that some consultant has come up with." It is important that there is reference to a set of principles. The document by Communities Scotland on national standards for community engagement is a good starting point. It is a little complex, but never mind; the principles are there. We are talking about how the agenda is set and what input communities have. We are talking about inclusiveness, representation, openness and involvement. We are talking about the openness and availability of the information and about making sure that people have access to it.

The key point that has been made several times is about people influencing decisions. On the principle of the consultation statement, there should be an obligation on whomever makes a proposal—whether it is a developer or the local authority—to set out the process and to set up an audit trail in order that they can examine the extent to which the principles have been met and to ensure strategic thinking about how participation will be achieved in that instance. We need to set out what we are trying to achieve and who should be involved at what stage. That thinking should be part of the new professionalism that we want to see in the system.

11:00

Ann Coleman: I will start by answering a point that was made by John Home Robertson, which will lead into the rest of my response. He spoke about communities taking part and about their not wanting certain developments. The problem is that communities are often afraid to agree to any kind of development in their areas because—as I have said—if they say yes to 10 wind turbines, they had better believe that you will get 100. By agreeing to developments, they feel that they are setting a precedent.

There is a fear that as a community develops too quickly, the controls are not in place to monitor it, whether it is the police or enforcement officials. There is a fear of progress being too rapid.

The lack of openness has made it difficult to participate at any level. No matter what system we introduce, Joe Public does not want a fancy, corporate-image approach; the public want to be spoken to in their own language and to know what a development will mean for them—they want to know what the bottom line is. They want to hear how they can take part and they want plain and everyday language. Perhaps there could be a local exhibition that people could go along to and make their input. People must have some sort of guarantee and criteria to assure them that saying yes to renewables does not mean that they will end up setting a precedent for covering an area with wind farms.

People are trying to be reasonable: communities are coming forward and trying to be part of the system. Everybody else has to take their share of the responsibility, but that does not happen at the moment.

Petra Biberbach: In answer to Cathie Craigie's question, a planning advice note is currently being prepared on community engagement. Some of us here are contributing to it. Essentially, that process is to do two things: it will consider how communities can be engaged more effectively and it will widen inclusion. That PAN will go alongside the bill. Those of us round the table today want to ensure that it will be practice-oriented and that it will be a tool for everybody who is engaged in the planning system.

The Convener: I want to wind up the discussion about the development plan. Christine Grahame and Patrick Harvie have questions. I will allow them to ask their questions, to which panel members can respond.

Christine Grahame: I hope that I will raise a fresh issue. The discussion has been interesting. I like the use of the word, "participation" because it is a much kinder word to use. The question of who should be involved is interesting, given what Petra Biberbach said about the varying extent to which communities are involved.

I also want to pick up on the stereotypical view of the people who come forward, or who are in a collective that represents the community, as being white professional middle-class retirees or whatever. Do you have experience of bringing young people into the process? They are fresh and do not have prejudices about what has happened previously. Many of the planning issues that will be decided in the national planning framework and locally will impact on them more than on you and me. Have you been successful in engaging young people?

The Convener: Before anyone answers that question, Patrick Harvie will ask one. Please remember Christine Grahame's important question.

Patrick Harvie: Harald Tobermann referred to what communities should expect of their local elected representatives and what local elected representatives should expect of communities. Could we hook the process—perhaps at the bottom end of the development hierarchy for smaller local developments—into the changes in the structure of local elected representation? In future, there will be three or four councillors in a multimember ward. Could they be given responsibility for conducting a process that involves the wider community, community councils and other community groups? A councillor's ability to input into a development currently depends on

whether they are on the planning committee, but three or four councillors in a multimember ward might have a more collegiate role. That might be asking a lot of our political culture, but changes will be expected of it.

The term “front loading” keeps cropping up. The Executive, the bill and planning authorities cannot front load the system; only people and communities can choose to do so. What planners, elected representatives and the bill can do is open up opportunities to participate early on in the process. However, should we seek—as the bill seems to do—to shift opportunities to participate from where they are at the moment to an earlier stage in the process and effectively close down existing opportunities to participate at a later stage? Should we open up the whole system or shift to up-front engagement only?

Petra Biberbach: I will answer Christine Grahame’s question. We had a discussion with the Scottish Youth Parliament about the planning system and identified the need to do some work on how we engage with youngsters. “Youngsters” is a broad term, but we have concentrated on engaging 16 to 25-year-olds in areas of change. It is easy to reach people who are in formal education, but it is more difficult to reach people who are 16 and have left school. We are working with Young Scot and Youth Link to develop a programme that enables us to reach those people. It is vital that people who are potential future decision makers are involved in the planning process. We will let the committee have the results of that work.

Harald Tobermann: I will respond to Patrick Harvie’s point about whether local councillors in multimember wards should have a specific role in planning. In principle, subsidiarity is a good thing: the lower the level at which a decision is made, the better. Making decisions at a local level might be appropriate for a certain class of decisions, such as those related to householders and other, smaller applications. However, what I like about the current planning system in Edinburgh, which is what I have experience of, is that we have a larger planning committee, so there is expertise, accountability and transparency, which we may or may not get at a more local level. A group of three or four people is a smaller sample from which to garner expertise.

Anna Barton: On Christine Grahame’s point about involving young people, in the Cairngorms a young person is anyone under the age of 45.

Christine Grahame: That still does not include me.

Anna Barton: We have developed quite a few methods that we use to engage young people. In rural areas, the young people whom we can get

hold of easily tend to go away as soon as they can. The challenge is to work with people who will stay, live and work in rural areas. We have to go to them—they will not come to us. We have to visit youth groups and hang around on street corners in an effort to get hold of one or two key people, whom we get to text all their mates. That is one way of getting word around.

We have also had some success with the 20-somethings. People in that age group have realised that the local plan can be a useful tool in delivering the jobs, housing and other opportunities that they need. The process is slow and has taken some time. We have been doing our work for only two years, but word is getting around and people are getting involved. It is a matter of having to go out and meet people on their own ground.

Jean Charsley: We have had experience of involving students, who might be as young as 16 or who might be in their 20s. A huge number of students live in the Hillhead area, which is around the university. Most students are concerned about living within walking distance of the university.

I have two points to make. First, although students are open to discussion and to appreciating wider issues—such as sustainability and the cumulative impact of certain things on developments—if they are presented to them, the problem is that they have exams, they have deadlines to meet and they move on. Every year, there are elections for student representatives and we have to go through the same process with the new representatives. Some are interested and some are not—it depends on the individual. We put a tremendous amount of time into involving students, but it is difficult to achieve continuity.

Secondly, in places in which there is such an imbalance in the population and the proportion of long-standing members of the community—who, generally speaking, are the people who look after those areas—is comparatively small, as well as having a dialogue with and an understanding of the majority, one must pay attention to the minority because its members are the people who live in the community continuously and who are therefore most affected by developments.

Roger Sidaway: I will give a quick answer to Patrick Harvie’s question. It is true that we must work on the principle of front loading. Is it not better to prevent conflict than to have to resolve it later on? That is the simple logic. We are talking about being proactive. I propose that the bill’s provisions on the consultation statement by developers should be reworded and that the statement should be renamed a participation statement. That is another principle that we should introduce if we are serious about getting people to be proactive about seeking participation.

The Convener: Thank you for your comments on the development plan process. Let us move on to pre-application consultation. We have mentioned the importance of people having confidence in the planning system. Do you believe that a system of pre-application consultation will help to rebuild communities' confidence in the planning process?

Roger Sidaway: Can we call it pre-application participation, please?

The Convener: We will certainly bear that comment in mind.

Douglas Murray: Pre-application discussion with developers should be encouraged. Such discussion has certainly been lacking in some areas in previous years. I will give an example. I was at a petrol station one evening when I was waylaid by a developer for half an hour on the subject of a proposed development and the problems that he was having with the planners. In response to requests from the planners, he had made about nine sets of variations to his application to develop a brownfield site. Pre-application discussion should have been essential in that case, because the planners had insisted that the development include an element of affordable housing, which the local community was against because the village concerned had a limited public transport service.

Furthermore, the developer had already built another development, the result of which was that a new primary school had had to be built. Although it had been open for less than two years, the school was at capacity because of the first development—I think that there was space only for two more young kids. There were problems because the planners refused to divulge the pre-application discussions that they had had with the developer until it was too late.

Anyway, the new school had been built thanks to a major contribution by the developer. When the developer then proposed further cumulative development on a small scale—perhaps only 17 or 18 housing units—the planners demanded that the development include some affordable housing. The planners may have been well-intentioned, but they obviously did not take into account either the capacity of the school or the transport infrastructure. In that example, no pre-application discussion took place and the post-application discussion resulted in the community rejecting the planners' proposal.

11:15

The Convener: Will the bill address that problem by ensuring that better discussions take place?

Douglas Murray: I certainly agree that more discussion with developers is required, even though some developers may shy away from that. Whether or not we like wind farms, there is probably a lot of mileage in looking at how wind farm developers have tried to engage communities. Regardless of whether they are for good or for bad, wind farm developments seem to have been the subject of much discussion at all stages of the process. I agree that pre-application discussions are required.

Harald Tobermann: It seems to me that the situation that Douglas Murray described a few moments ago is an example of a bad planning department. I am shocked by what he described, as I have never come across a planner with such low standards in Edinburgh. Pre-application consultation or participation—or whatever we call it—would not help much in such situations, in which the planning department simply requires expertise. Having acquired some expertise over the years, I do not think that we should generally expect that the bill will do much about that particular planning department, which obviously needs to be beefed up and requires root-and-branch reform.

To answer the specific question, my previous involvement in pre-application consultations—which developers are currently encouraged but not required to carry out—suggests to me that developers engage in such discussions to ease the progress of their planning applications rather than because they genuinely want to engage with communities. I do not hold that against them, as that is only human nature. Developers want to get their development through the planning process, so they will jump through the various hoops that have been put in place. In my view, developers seriously engage with and listen to communities only if they know that the planning authority staff are watching the consultation process and are reading very carefully and acting on the reports produced during that process. That is a key point. If it is written into the bill only that consultation must take place, developers will just tick the boxes.

Anna Barton: A couple of difficulties exist. Every developer will undertake some form of consultation—or even, if we are lucky, participation—but the bill imposes no mandatory requirement on developers to act on the findings of any consultation that is undertaken. If we want effective pre-application consultations whereby developers and communities get together to make them work, we should consider whether such consultations need to go hand in hand with a third-party right of appeal. If developers knew that failure to make a good job of pre-application consultation could leave them open further down the line to a third party exercising their right of

appeal—which would apply in a limited set of circumstances—they would be more likely to engage in genuine dialogue.

The Convener: Is it acceptable that developers should be allowed to get away with those things? Should we allow matters to reach the stage at which people need to appeal the decision? Should there not be a requirement on developers to engage with communities and to allow them to participate in the decision-making process?

Jean Charsley: There is a strong feeling that the process is weighted in favour of developers and against communities. Developers have a whole battery of expertise at their disposal that communities do not have. We feel strongly that there should be independent assessments—traffic and socioeconomic assessments, for example—of some of the documents that are submitted. Those assessments do not happen, and many communities cannot participate in conducting them because they do not have the required expertise or access to advice.

There is also a problem with revisions of applications. It is thought that there is not enough up-front information on initial applications; then, when everybody has had their say on an initial application, people are not notified of revisions. There is no transparency in the system.

Local authorities need a bit more leeway to consider cumulative development. I think that they are currently prohibited from participating in that way, so the process needs to be freed up in that respect. Perhaps there should be more opportunity to object. Some independent assessment, scrutiny and arbitration is required for when people feel strongly about proposals, but that takes us into an altogether different area.

Ann Coleman: The bill definitely places more emphasis on pre-application participation. In Greengairs, we have been extremely successful with a developer, as the convener knows. We worked with that developer and ended up backing its application for a huge recycling facility.

The trouble is that we have also experienced the other side of things. The details of planning applications have gone through processes in which the community participated but, in one case, a map showing the area in which the developer planned to work was completely wrong. The community told the local authority that the map was not right; the local authority informed the developer; the developer said that the map was right; and the local authority then told the local community what the developer had said. The local community repeated that the map was not right, that it had lived with the site while it was an operating landfill site and that if the developer wanted to rework the area for opencast work, it

would have to go through landfill. The community did not have the resources to question what had been said, but ended up having to find out where and how to get that map. The outcome was that the local authority said that it appreciated that the landfill site was in a different place to where the developer had said that it was. If the developer had been allowed to get away with its original proposals and had reworked the area so that opencast work was going on through landfill, people in Edinburgh would have been able to smell the results.

That example shows why the public desperately needs accountability for and accessibility to the details of planning applications. The minute details of planning applications can be so misleading that they can result in complete disasters. There is a very good example of things working in Greengairs, but there is also an example of the other side of things. A public right of appeal and accountability to the public are needed to deal with people who do not play by the rules and have no principles.

Petra Biberbach: Pre-application consultation is vital in order to front load the system, which is what we want at the end of the day. We want people to be involved in the process at a much earlier stage. There are already good and welcome examples of participation—especially involving the house-building industry—in Scotland.

However, I have two concerns. First, arrangements require to be regularly reviewed. If consultation arrangements have been made, a system must be in place that monitors and evaluates what is on the table a year or two later.

Secondly, criteria are needed. We need a template showing what is required from the developer by the local planning authority and by the community. Such details are required so that people do not simply say, “This is what we have done, and that is good enough for us.” Standards must be set. However, we certainly welcome pre-application consultation in principle.

The Convener: As we have concluded our discussion of pre-application consultation, I suspend the meeting for five minutes. The meeting will be reconvened at 11.30, when we will continue our discussions.

11:25

Meeting suspended.

11:33

On resuming—

The Convener: We move on to the issue of enforcement and good neighbour agreements. We

have not touched on good neighbour agreements yet today, but we have touched on enforcement. Do the witnesses believe that the proposals in the bill that relate to enforcement and good neighbour agreements will promote greater public confidence in the planning system and the power of communities to monitor and limit the detrimental impact that some developments can have on their communities?

Ann Coleman: Frankly, we do not have an enforcement system for the 21st century. The stop notices and all the rest of it try to make things work. That is all very well if we can get hold of enforcement officers, but we have had some horrendous experiences with that. I have put that in writing and I am not sure that I want to go through it again. We have quite a lot of experience of the non-enforcement of conditions. Enforcement would go some way towards helping the public to trust and have confidence.

On whether fewer conditions should be attached to developments, to ensure that the few that are attached can be enforced, I do not agree with Mr Mackinnon. I think that we need to have conditions that are relevant to the development. Those conditions are applied to the development to protect the public and the environment—that is not their sole purpose, but it is their primary one—and need to remain in place. I do not know how good neighbour agreements will play a role in ensuring that the conditions are enforced. I cannot quite get my head round that, but I believe that enforcement is crucial.

We do not have a good neighbour agreement in writing, but we have a good relationship with one of the developers. When we went through a crisis, we had mediation between the developer and the community and came out with a good way of moving forward. Friends of the Earth acted as a completely impartial and independent mediator. The community did not want a piece of paper that was nothing more than words because, at that point, it had lost trust in words on paper. Having a good neighbour agreement was not relevant at that stage and we have worked on without it.

I thought that there would be no right of appeal for a community in relation to the good neighbour agreement, but I have been corrected and now think that there will be such a right. That will go some way towards allaying concerns. If good neighbour agreements were put together properly, I think that they would be effective.

The Convener: Based on your experiences in Greengairs, where you do not have a good neighbour agreement but you have a relationship with a developer that amounts to a good neighbour agreement, do you think that the issue is one of enshrining good practice, such as that which exists in Greengairs, and making it more

widely available across the country to all communities, not just Greengairs?

Ann Coleman: I would like to see how that can be done. The issue comes down to how it can be controlled once it is in place. There is another developer with whom our relationship just did not work. The community and the first developer I mentioned have a genuine will to work together. We are seeing the benefits of that all round. I would like those practices to be enshrined in a way that would enable other communities to benefit from them. However, that would take time in relation to every community.

How is a good neighbour agreement put in place? It has to be driven by the community and the developer, but assistance is needed from the local planning officials to ensure that no requests are made that are completely unrealistic. We have some people in our community who would have made completely unrealistic requests, so we had to pull back to ensure that we had a manageable relationship.

Ms White: Enforcement is important. There is no point in having rules and regulations if we do not enforce them. The good neighbour agreement is an issue that comes up all the time. I have always been interested in that issue. You are right to say that if a third party—a community—enters into a good neighbour agreement with a developer, it has the right to appeal if that agreement is deviated from. However, that is not mandatory; it is just a suggested way of proceeding that involves the developer and a group of people.

For situations in which, in the pre-application period, a community or a group had objections relating to participation and consultation, would you have more faith in the planning system if a good neighbour agreement was a statutory requirement and every developer had to enter into such an agreement? Would it negate any further rights that the community believed it had? At the moment, such agreements are not mandatory or based on legislation, so developers are not required to enter into them. What do you think about our pushing the boat out a wee bit further on good neighbour agreements?

Jean Charsley: That is a good suggestion. Perhaps it should be incorporated into good practice that there should be good neighbour agreements for developments of the sort that we are discussing. Our experience of enforcement is not happy. We asked for enforcement in our conservation area and were told that that was not in the public interest. An inquiry into the matter illustrated that there were three enforcement officers for the whole of the south and west of Glasgow, who could not do anything. An inquiry by councillors indicated that the issue was the lowest

priority when it came to allocating resources. If the bill is to work, money must be allocated so that a sufficient number of enforcement officers are employed. It should not be possible for that money to be used to fund other priorities. It would also help if certificates of completion were issued after site visits, rather than negotiated over the telephone because of a shortage of staff. I agree that planning permission should be subject to conditions.

Adam Gaines: I want to comment on the issue of enforcement from an equalities perspective. Running alongside the bill are duties that authorities will need to take into account under the Race Relations (Amendment) Act 2000 and the Disability Discrimination Act 1995. From next year, there will be further duties in respect of gender. Authorities will be required to consult on and to take account of equalities matters. If they do not, individuals will have the right to seek judicial review of decisions. There is an additional enforcement route on the equalities side to be considered.

Harald Tobermann: I stress the importance of enforcement. Imagine a judicial system in which people are given prison sentences by a court but there are no prisons where they can be locked up. We would quickly lose trust in such a system. To some extent, that is the situation that exists with the planning system in Scotland. Conditions are being imposed that are normally sensible, but there are few mechanisms for monitoring them, let alone enforcing them. Local authorities do not have the resources to do that properly. They rely entirely on members of the public coming forward and saying that a condition has not been particularly well enforced. As we know, members of the public may not be able to comment on that issue because they lack the necessary technical expertise or access to the site. As has been said, even if breaches of conditions are pointed out to local authorities, enforcement of those conditions is very low on their agenda. In Edinburgh, there is a planning charter that sets out the conditions that the council will enforce, but most issues roll off the table. Beefing up that side of things must be part and parcel of the legislation.

Anna Barton: In the past, lack of enforcement was one reason for the sense of distrust or, at least, scepticism that existed about the planning system. We like to think that most developers will play by the rules, but there are always some who do not. If they are not pulled up sharply and enforcement is not seen to happen, people will ask themselves what the point of getting involved is. That is part of the problem that we have been discussing.

Christine Grahame: We may need to consider giving communities some assurance that good

neighbour agreements will be enforced under subsection (9) of proposed new section 75D of the Town and Country Planning (Scotland) Act 1997. The bill states that a good neighbour agreement

“may be recorded in the Register of Sasines or ... the Land Register of Scotland”.

That is not mandatory. It might give security if we tightened up the provision, so that it stated that such agreements “shall be recorded”, which would mean that they were enforceable. The matter could be taken to court and interdicts could be issued, because we would be dealing with an enforceable contract. You might want to look at that when you leave here and explore how it could be strengthened.

11:45

Ann Coleman: I take your point and I agree that such agreements should be enforceable. The problem is that the public do not necessarily want to go into such a system. We always get accused of being adversarial, but we do not want to have to use the legal system. We would like it if the Scottish Executive played its part by ensuring that there are penalties and so on. Judicial reviews are out of the league of most communities; it might cost £100,000 for a judicial review of a big development, and we could not find that kind of money.

I take your point and it would help considerably if good neighbour agreements were enshrined in law and could be enforced, but do we have to go to the law? Could we go to the Scottish Executive and could it do that part?

Christine Grahame: That might be an alternative; there might be two routes. The point that I am making is that the agreement would be a backstop. If a breach of contract could be established before a sheriff, an interdict could be obtained on the spot. I was just considering that line. At the moment, that would not be mandatory. If the good neighbour agreements are to be of value to communities, the recording of them should be mandatory and they should be enforceable.

The Convener: I see the good neighbour agreement as being more about a good working relationship between the community and the developer, in which there is engagement and information is passed around, but the legal safeguards should be in the terms of the planning consent. When those are breached, it should not be for the community, the community council or an individual to pursue that. It should be for the local authority—which unfortunately might not have enforced such planning conditions in the past—to enforce them and, where necessary, take the legal recourse that it will have.

Will the greater powers to issue temporary stop notices address your concerns and give the community the level of protection that you are looking for? I know that stop notices have not worked in the past, but do the proposals in the bill go some way towards giving communities a safeguard?

Harald Tobermann: On the ability to take someone to court, I would like to be able to take the local authority to court in this context. At the moment, if the local authority does not want to enforce a planning condition that I think it should enforce, it can say that it does not want to and does not have to, and that is the end of the matter. I would like to have the legal right to take the local authority to court, or at least to threaten to take it to court—I am sure that it would enforce planning conditions if I made the threat. There must be an obligation on local authorities to enforce the conditions that they have laid down. If those conditions have not been met, people should have the right to take the local authority to court over that.

Anna Barton: One of the difficulties is that we are all aware of instances where a local authority has not pursued enforcement because it does not have the resources—financial or otherwise—to fight a large developer. It is seen to cave in because it has no other choice, given the means that are available to it. It is not about what the local authority would necessarily choose to do but about what it is able to do under the circumstances. If good neighbour agreements are made enforceable, local authorities will have to be given more teeth through the increased financial resources that they might need to take a large private company to court.

Euan Robson: Would you be in favour of the local authority having the right to claim fees or expenses from the developer in those circumstances in order to pay for the appeal process?

Anna Barton: I do not have the expertise to suggest a particular mechanism, but it is obvious that developers—especially large ones—have more power and clout than any other group when it comes to planning. They can just delay and delay and, no matter what conditions they flouted in the first place, they eventually just get away with it.

Harald Tobermann: I was involved in a big local planning case in which the developer, Wimpey, appealed against the council's decision. That resulted in a public inquiry. I had to take 14 days off work to attend the inquiry every day, to cross-examine the witnesses on the other side. The chair of the City of Edinburgh Council's local planning committee also attended the inquiry. In my view, that person is in my pay and he should

have been out dealing with planning matters, not sitting on a public inquiry into the Wimpey case. That person, whom we elected to represent us in planning matters, was out of the picture for that period. At the end of the inquiry, although Wimpey lost, the costs were not awarded, so Edinburgh lost out in a big way. If developers want to go down the route of an appeal, they should pay the costs when they lose.

Jean Charsley: We are very disadvantaged in this. We do not have the means to go to law or ask for judicial review and we are not protected in law either. We have been warned by Glasgow City Council's solicitors that we have no protection against being cited in legal actions by aggrieved or disappointed developers. That is one of the things that inhibits people's involvement with community councils. Perhaps some attention should be given to finding a way to protect the legitimate activities of community councils, to enable them to object substantively in the face of the bullying that we experience from well-funded large organisations.

Douglas Murray: The point has been made several times that community councillors have problems with their status. One question in a recent discussion paper was whether community councillors should have some kind of corporate status, which might help the individual community councillors.

The Convener: Let us move on to mediation and objection. We have touched briefly on mediation. Do you have any additional comments to make on what you consider to be the potential benefits of the use of mediation in the planning system and process, in terms of building consensus?

Roger Sidaway: In general, using mediation to resolve disputes has the advantage of leading to a better outcome; improved relationships, which are very important; and, in the long term, savings in time and cost. As Ann Coleman's case illustrates, there is a value in getting independent, impartial, confidential and non-judgmental help in the process. The mediator is there to assist with the process of negotiation between the parties, not to deliver the outcome—it is not an adjudication.

We have many examples of mediation working elsewhere. In our written submission, we quote the Minister for Justice, Cathy Jamieson, as saying:

"The Executive believes that mediation can contribute to the effective and efficient administration of justice in the civil courts."—[*Official Report, Written Answers*, 5 February 2004; S20-1257.]

I will not read the rest of the quotation, but that has been put on the record by your eminent minister and we would say that that is applicable in this case. We think that there is a clear role for mediation per se—that is, in conflict resolution—

while proposals are crystallised and before objections are resolved.

Negotiations could therefore take place at the pre-inquiry stage to resolve issues to do with the preparation of plans or particular applications. The approach might involve informal hearings.

The Scottish Mediation Network has been in discussion with the Executive for nearly a year. We suggested that ideas about mediation be put to the test in a pilot scheme and we were invited to submit a proposal on how such a scheme should be conducted. A pilot scheme would enable us to ascertain the kinds of disputes that could be resolved and at what stage in the process mediation might be offered. It would also provide a basis for the consideration of cost and resource implications. However, the Executive has not told us why the pilot scheme has not yet gone ahead.

Stuart Hashagen: I agree with Roger Sidaway. A range of skills and techniques is important in managing engagement, dialogue or participation—or whatever we call the process. I want to alert the committee to the existence of a couple of pieces of work that identify those skills and competences. The Scottish centre for regeneration commissioned work a couple of years ago, which was eventually published in the document “Creating a learning landscape: a skills framework for community regeneration”—I think that the Royal Town Planning Institute was consulted in that context. The document identified what needs to be done beyond the boundaries of each professional area.

More recently, the Scottish Community Development Centre has done similar work, to try to set out a practice and competence framework for community engagement, primarily in the context of community planning and regeneration. That framework could usefully feed into the planning debate. Mediation is one tool among a range of skills and approaches that might be needed to manage the process effectively.

Mary Scanlon: I listened carefully to what Roger Sidaway said. There is a huge role for mediation, which I hope will help to shorten the period—be it two years, five years, 10 years or 20 years—that is needed to change the culture. Roger Sidaway talked about building good relationships. Are there currently adequate opportunities for community groups to enter into mediation? Does the bill contain provisions that will enhance such opportunities? If the bill does not contain such provisions, should it be amended in that regard?

Roger Sidaway: In general, there is a growing awareness of the value of mediation in a number of contexts. Community mediation services are dealing with family and neighbour disputes and

there is increasing interest in using mediation in commercial disputes, for example over breach of contract. Skills and expertise in mediation are being built up. We do not have precedents and examples in the planning field—I am interested in the example that Stuart Hashagen described and would like to discuss that with him. However, the logic exists and there seems no reason why it should not be applied. Given that the value of mediation has been accepted in principle, I repeat that a pilot scheme should be set up to allow careful scrutiny of how mediation would work. For example, we must consider the availability of mediators by ascertaining the extent to which community mediation services would have the capacity to assist in the process and the extent to which mediators from the private sector would be needed. A pilot scheme would help to thrash out such details in a practical way.

I do not think that I answered Mary Scanlon’s final question.

Mary Scanlon: I admit that when I scrutinised the bill I did not look for opportunities for mediation. Perhaps the matter will be included in guidance. Does the bill provide opportunities for mediation? If it does not, should mediation be mentioned in the bill rather than be left to guidance?

Roger Sidaway: We have debated the matter among ourselves and on balance we think that a hard and fast provision in the bill is probably not required, because in essence mediation should be a voluntary process. However, in so far as the bill’s approach is to emphasise community engagement and participation, mediation should be explicitly mentioned as being part of the toolkit.

12:00

Anna Barton: Mediation is a crucial part of the culture change that is required. The more that mediation is used successfully and seen to work, the more people might move away from the adversarial approach. Mediation should be considered at all stages, even before people have any issues to fall out about. A framework should be in place to allow dialogue before people form entrenched views about anything. Although, like Roger Sidaway, I do not want hard and fast provisions on mediation in the bill—the last thing that we want is overly prescriptive legislation—mediation is one of the most useful tools in the tool kit.

Patrick Harvie: I was going to ask about the practical issues that arise from the existing capacity for mediation in Scotland, but Roger Sidaway has addressed that. Does a balance need to be struck between what we might call mediation with a capital M, which by definition

involves an independent and external person, and getting planning authorities and communities to gain some of the techniques and skills that mediators use? That would allow planners to become people who deal with people as well as people who deal with plans. Would some sharing of skills be useful?

Roger Sidaway: Yes. The more people there are who know and appreciate mediation and, ideally, have practical experience of it, the better. The committee should remember that we are talking about assisted negotiation. Negotiation goes on all the time in our everyday lives and mediation is just an enhanced negotiation process. I am glad to say that people from local authorities and many Government agencies attend the training courses that I run. In trying to achieve culture change, it is important to have people inside agencies who are fully aware of the implications of mediation, so that there are internal advocates of the mediation approach. However, a clear distinction must be made between officials in planning authorities who are the decision makers and those who are interested in negotiation and mediation, otherwise potential conflicts of interest may arise. We must separate the responsibilities of decision making from those of bringing in impartial advice and skills.

Petra Biberbach: I agree that mediation has an important role early on in the consensus-building approach as well as in conflict resolution. Two members of Planning Aid for Scotland are currently doing a mediation course. As Roger Sidaway said, it is vital that resources are found to implement the pilot that has been talked about for the past 18 months but which is just hanging there, because we do not know what could work, what works well, what local authorities must do and what outcomes can be expected. We need much more hands-on experience, which is why it would be helpful for the committee to have the results of the pilot before any new provisions are put into the bill. The bill will undergo various stages, so now may be a good time to consider initiating the pilot.

Ann Coleman: In the mediation process, we need to bring local elected members into the equation, because they are removed. When we ask elected members to talk to us about decisions that have been made about our area, the only one who comes is our local councillor—no one else ever comes. The members of the planning committee have never yet come to speak to our community. Elected members need to be brought into the process.

It is all very well to say that mediation has to be impartial and involves self-assistance, but what communities need is somebody who represents their interests, rather than always being impartial.

Nobody in planning will ever give us the answers if we do not ask the right questions.

We had a situation in which an application was made that was contrary to strategic policies 9 and 10 of the structure plan. In relation to both points, it referred to need. Needless to say, when it came to a public inquiry, we put in a bit of time to deal with the issue of need, only to discover that there is no legal requirement to demonstrate need, so we had wasted our time. It was all written down, but nobody thought to say to us, "Look, don't waste your time on that. There is no legal requirement to demonstrate need."

In order to get the right balance, we need legal experts who will champion the communities' points of view. After all, developers have legal representatives who champion their positions.

Christine Grahame: I have been a convert to mediation since I went to Baltimore and saw it working in lots of different facilities and areas there, not just in litigation but in area neighbourhood things. I am convinced that there is a role for mediation and I am a wee bit disappointed that you do not want it to be covered in the bill. I seem to remember that the family law legislation covers mediation—it is not compulsory, but it is there in the legislation.

Will you reconsider the matter? The bill could include an enabling power such as, "Regulations shall be brought forward with regard to mediation processes." Under the regulations, mediation would be discretionary, not mandatory. We want to move the matter on because, otherwise, I suspect that it will get lost in the wash. It might be worth while to put something in the bill—not something detailed, because there has not been a pilot and we do not know whether mediation will work, but something that says simply that regulations will be made. That will leave things open and regulations could be made once a pilot had been run and we were ready to include mediation in the process. What is your view on that?

Jean Charsley: Mediation would be most helpful in engendering constructive participation in communities. For example, the University of Glasgow wanted to build a new medical sciences building, which was desperately needed and for which it has funding. We had good pre-application discussions with the university and it agreed to some changes, but at the same time we were aware that there was a growing, orchestrated campaign against the proposal by particular sections of the community. If it had been possible to get an impartial mediator in at an early stage to discuss the problems and deal with them, that would have helped. We tried to do that at a later stage when we invited all parties to come and discuss things, but by that time positions were so entrenched that nothing could be done.

Roger Sidaway: I take Christine Grahame's point. I undertake to go back and, with my colleagues, reconsider what might be done in the bill.

I do not want to sound too purist, but we have to work out the potential roles and the assistance that can be given to communities with capacity building. It is important that communities get the skills and resources that they need and I am very much in favour of that but, on Ann Coleman's point, we have to distinguish between advocacy and mediation per se. If mediation transgresses that boundary, it will lose the confidence of the other parties. However, I take the opportunity to point out that when we talk about mediation we are not necessarily talking about one person. There might be a team of co-mediators who have technical expertise.

In relation to the particular kind of dispute that we are now talking about—again, we come back to the pilot—it is important to have professional planning advice available, through Planning Aid or from some other source, as part of the package that people are trying to work through. I could cite many instances of cases involving complex environmental issues—largely in the United States, where environmental mediation is well established as a practice and where I have a lot of contacts—in which technical expertise is brought in to help with complex scientific matters that are beyond the scope of a mediator per se. Again, that technical expert must be seen to be impartial and not in the pay of one side or the other.

The Convener: The committee would find it useful if you could submit some written evidence of your experience of environmental mediation in the United States. That would be much appreciated and would give us a good context for reflecting on what has been said this morning and for adding to our knowledge.

What are the witnesses' views on the capacity of, and the resources for, communities to be able to play their part in the culture change that will be needed once the bill is implemented, so that we can ensure that the planning system is more open and transparent?

Douglas Murray: As communities, we need to build in more networking between the various parties, and mediation and equal rights are subjects that I have not really considered from a community council point of view. However, community councillors have statutory obligations in respect of human rights, equal rights and disability discrimination, which I became aware of only a few months ago.

We have to build our networks and we need more resourcing to do that; we also need more assistance with information technology and more

professional help from Planning Aid and other such bodies. Networks could be built through the community planning set-up. A lot of resource is being put into community planning at the moment, but whether that is being pushed into communities rather than just being allocated through the main players is perhaps questionable. Community planning is one of the Executive's main planks and it should be a main plank of communities too.

We did a survey about two years ago and found that community planning did not register at all. There was a very poor response. Those who did respond were talking about development planning, but people did not think of that as community planning. I would like a crossover between development planning and community planning. Much more should be put in at local level to enable communities to come up with their own visions. Many of the main partners in community planning are forcing their issues down the way, so we end up with local networks, partnerships, forums or whatever they are called, that do not deliver effectively what a community wants. We need to see whether additional resourcing and professional help could enable communities to be more visionary about what they would like. That could come under the community planning heading and then be led into the development planning process.

The idea would be to get community planning started before the local authority comes along with its vision. As has been said previously, including in written submissions, local authorities give limited options. People are presented with a paper and they look at it and say, "Right, we've got one, two and three—these are the options." They tend to concentrate on one option and their mind goes blank to the other options that should be available. We need more networking and a culture change. Unfortunately, I do not think members can legislate for a culture change—even in the bill.

12:15

Anna Barton: I wanted to say something about resources, but I will just comment on Douglas Murray's points because community planning is a big part of the planning issue and people who are involved in any kind of community planning and development are more likely to become involved in planning issues. There are nearly 50 community development trusts and companies within the Cairngorms national park, which are producing creative solutions to identified local need. Four local authorities cover the park area, but they do not engage sufficiently. We still have top-down solutions imposed on us. We have just been told that our new community planning partnership will have a community representative for the first time. Speaking on behalf of communities, I do not

regard that as community planning; it is local authority planning. As Douglas Murray said, community planning and local authority planning should be linked.

On resources, in order to encourage as many people as possible to participate in the local plan consultation, the national park authority in the Cairngorms outsourced the work. I am one of the contracted independent people who do that work. I cover the west side of the park, in Badenoch and Strathspey, and my colleague does the other side. Our job is to go out there, encourage people to take part and recruit facilitators at a more local level. A lot of money, time and thought are being invested in the process. The people who are out on the ground have a level of independence. It is not possible to cure everything by throwing money at it, but employing people to work locally might bring the desired results.

Stuart Hashagen: It is important to consider the stage that has been reached in the rolling-out of the community planning legislation and acknowledge that that process is based on engagement being a prerequisite. Community planning partnerships must engage with community bodies in their area in order to develop a vision, then produce development delivery plans to achieve that.

There is widespread criticism of that process, but it is important to bear in mind the principles that underpin it, which are what we are trying to address. It takes time to develop a system's capacity to make the desired changes—perhaps it requires a culture change. A lot of investment has already taken place in the community planning context in order to understand what community engagement is. We referred in our written evidence to the national standards for community engagement, which try to set a framework for that.

There is then the question of capacity building. People cannot engage unless they have the capacity to do so; it requires resources and support. It is not just the communities that need capacity building; the people in planning and other professions who work with communities need to develop their capacity to engage with communities. The whole area is resource intensive. It has been identified over the past two or three years in community planning that capacity-building resources are needed. There are some, particularly in the form of what is now community learning and development, but, over the years, the number of people with skills and the capacity for people to go out and do that work have reduced. There is a need for investment in the sources of capacity building support for both communities and community organisations.

We must recognise that the communities sector is diverse. There are community development

trusts, community councils and community forums. There is now a community voices network, which brings together people from regeneration areas, and there is a network of community health projects. There is a network of green space projects, as well. It is important to say that there is quite a lot going on out there, which may not always be recognised. It is not simply a question of engaging with the first people we come across; it is about trying to find what organisations and structures there are, what their perspectives and constituencies are and how they can best be brought in. It is a complex business.

Petra Biberbach: Planning Aid has been in existence since 1993 and, until 18 months ago, it was able to employ one and a half people and had about 60 volunteers. Over the past year and a half, we have increased our casework by 55 per cent, which has led to severe resource issues. Our work is delivered through Planning Aid volunteers, all of whom give their time freely, and those 110 volunteers are severely stretched. We therefore want to up the number of volunteers commensurate with the demand. We must double their number, as the demand will be there to get more people involved in the system.

Those planning volunteers do not just do the work; they are, themselves, engaging with the community in a non-confrontational way. They are given the opportunity for a whole Saturday—six hours of their continuing professional development time—to engage with people in different local authorities and, for the first time, they learn about engagement techniques. They also learn that not everybody in the community is hostile to them. To me, that is the whole thing coming together and squaring the circle, as some people would say.

It is important that the resources are put in place to enable that to happen. As others have said, people are distrustful of the system and do not want to engage with it. They do not trust what is happening, so we need an independent, impartial organisation that will facilitate that. It must be a free service, as well. We offer a service that is not free in terms of costs and resources, but that is free in terms of delivery. To the people who come to us who qualify for the free service, we give our time freely.

Euan Robson: Do you need extra resources to develop your volunteer network?

Petra Biberbach: Absolutely. At the moment, we have a Scotland-wide network of planners. We have planning volunteers in Orkney who find it difficult to work in Shetland. We have planners all over Scotland, but we need many more and we need the resources to go with that.

Let us consider what is happening in Wales and England, by comparison. Wales has half the

population of Scotland, but planning aid services there receive double the amount of funding from the Welsh Assembly. When the Planning and Compulsory Purchase Act 2004 came into force in England, planning aid services were given £6 million to cover the whole of England, excluding London. We are talking about a resource-intensive service; nevertheless, the service is vital if the Planning etc (Scotland) Bill is to work.

Euan Robson: The majority of your volunteers are professional planners or have some planning qualification. Can you envisage developing an additional network of people who are not professional planners but who can advise communities on how they might set themselves up into groups and on how they can engage with the process short of the technical planning considerations? Can you envisage having two tiers of volunteers, one of which addresses issues of a more general nature and one of which is made up of planning professionals?

Petra Biberbach: Yes. You must have read our literature. We have 100 planning volunteers who are planners and must be Royal Town Planning Institute registered, as that provides indemnity in giving free and impartial advice. We also have about 100 organisations that we call our friends. Those people are not planners, but they are out there, telling other people about the service that they have received from Planning Aid. Most of them are amenity groups or community councils that we have trained in the past three years—we have trained 243 community councils on aspects of the bill. Those friends are vital to us and we would like to do more with them.

Harald Tobermann: I will add to the shopping list for resources. The most valuable resource for people in the community is their time. We will never be able to pay for that, so one object should be to minimise the use of their time—to try not to make processes as drawn out as they sometimes are and always to keep an eye on whether a process can be shortened without losing fairness or affecting any technical considerations. Sometimes, I feel that that does not happen.

Another resource that is lacking is local authority enforcement, which has been mentioned. That needs to be beefed up severely. Statutory consultees such as the fire brigade, the police and local authority transport departments and parks departments all have the right to be consulted not only on planning applications, but on wider matters. I feel that they, too, are stretched. For example, to my knowledge, the City of Edinburgh Council's parks unit has not commented on a single planning application in the past few years. The unit's staffing levels show that it has nobody with the expertise or the time to do that. The fire brigade and the police often recruit people to give

advice from within their organisations and I feel that those people do not have the necessary expertise to comment.

My biggest bugbear concerns local authorities' transport departments. Their staff are good at their jobs—they are often engineers by training—but they do not have a planning overview. Their advice, which is often considerable and influential in planning, can be secret or difficult to get hold of, impenetrable and technical. That advice needs to be overhauled and improved to allow local authorities to understand and engage with it and to rely on it as good advice for their communities.

Adam Gaines: Capacity building is also relevant to many equality groups. In relation to the built environment and disabled people, we receive many comments about how further capacity building would help to enable information to reach local groups as well as national groups.

Further availability of planning materials in different formats and languages would also help us to reach across the community.

The Convener: Thank you for that helpful point.

The final issue that we will cover is the third-party right of appeal, on which several witnesses have touched. The Executive does not propose a third-party right of appeal in the bill. The committee is interested in whether you believe that the other measures in the bill are sufficient to address communities' concerns or whether you still believe that we require a third-party right of appeal.

Ann Coleman: We still very much need a third-party right of appeal. The one way to make earlier involvement and all the other measures in the system work is to provide public accountability, and the way to do that is to have a right of appeal so that, in appropriate situations, we can pull everything together and put it out there. The public should have a right to information and a right to appeal to ensure that what they have said has been truly assessed.

In our situation, developments go through and, much of the time, what we have been told proves to be more fantasy than fact. However, we have no means through which to say that we need more information and that what we have been told is not correct.

There is not enough in the bill; we need a right of appeal not only in relation to decisions that are made that go against the principles of social or environmental justice, but in order to ensure that local authorities are not pushing the boundaries. They should be setting standards rather than making fools of us.

12:30

Anna Barton: As I said earlier, a third-party right of appeal will mean that people will try harder to get the plan right much earlier in the process. The issue is one of parity. Everyone should be on a level playing field.

It will take time for people to change how they think and operate and it will take even longer for people to trust that that has happened. If a third-party right of appeal were included in the legislation and people knew that they could use it as a last resort, they might come to trust the system.

Deryck Irving: If all of the aspects of the bill were applied in the most positive and effective ways possible, that might remove the need for a third-party right of appeal. However, especially because one of the drivers of the legislation is the desire to speed up the process, I am concerned that that might not happen. There is a danger in that, whenever a corner is cut, the community is disenfranchised further. It is slightly iniquitous that only certain people will be able to question decisions. The safeguards that will be built in by the bill will work only if they apply fully, meaningfully and constructively. There will always be problems if engagement is insufficient, hurried or is conducted in language that is not wholly accessible. There are dangers in assuming that merely to put in place provisions that look good will solve the problem.

As Patrick Harvie said earlier, if moving engagement forward means that you lose some engagement at the end of the process, there is a danger that you will end up with tokenism and that decisions that are not right will still be made.

Ms White: We should also bear in mind the fact that the third-party right of appeal has nothing to do with nimbyism, which some people who agree that there should be one have been accused of. It would be a limited right.

I want to go over issues that were raised earlier. Obviously, given that I have a proposal for a member's bill on the third-party right of appeal, I am very much in favour of it. However, I am also very much in favour of some of the stuff that is in the white paper, "Modernising the Planning System". I want to clarify what might happen in relation to the consultation process. If consultation, participation and mediation are front loaded—including mandatory good neighbour agreements—but a large part of the community still had a great number of concerns, would it be fair to use a third-party right of appeal?

Is it unfair, in planning or any other process, for one person to have a right to appeal while others do not? Would you agree that, to make the process transparent and democratic, there should

be equality in the planning system with regard to appeals?

Douglas Murray: The committee has seen the petition that was co-sponsored by Scottish Environment LINK and the ASCC. It gathered more than 5,000 signatures from a wide variety of sources across Scotland.

A third-party right of appeal would be very much an appeal of last resort. People would still attempt to focus on applications at the outset rather than wait until the end of the day because the expense of lodging an appeal would be such that any community would need to consider the costs before it decided whether such an appeal was worthwhile. We need to ensure that developers and communities are focused on what happens at the outset of the process, but developers would focus more on what the community thinks if they knew that a determined community could use that right of appeal, even though providing the cash that would be required for such an appeal would often mean that people would need to put their livelihoods at risk. The third-party right of appeal is a basic principle that should be in the bill.

I cannot remember whether this is proposed in the bill, but evidence that has been given to the committee has highlighted the fact that the Executive is removing the third-party right of appeal that was set up under the Zetland County Council Act 1974.

Ms White: The bill contains provisions to that effect in respect of fish farming in Shetland.

On the monetary issue, proposals have been made by others, including me, who are not part of the Executive that communities that make a third-party appeal should be required to pay only a limited amount—perhaps £20 or £30—so that the cost is not prohibitive.

Patrick Harvie: In my experience, people who ask me to become involved in planning issues usually do not have much experience of the planning system. For them, the idea of scrutinising a planning application, submitting an objection to it, attending a planning committee and thinking about the possibility that they might need to participate in a public inquiry at some point down the line is quite intimidating. People who do not have much experience of the planning system can be put off by the thought of having to go through all those steps.

Do the witnesses agree that the aim behind providing communities with a third-party right of appeal is not to add an extra process for objectors who just disagree with the outcome of a decision but to provide a mechanism for challenging the basis of a decision if there is an issue about how the decision has been made? The third-party right of appeal is not simply about changing the final

outcome but about altering the power balance in a way that would affect the whole system from the word go. Although another mechanism would be required at the end of the process, the idea is that it would affect not only the end of the planning process but its entirety. As Deryck Irving said, if all the good and positive engagement works well, few third-party appeals would be required, although we would want the existence of the right of third-party appeal to impact on the rest of the process. Do the witnesses agree that people are looking for that kind of effect rather than just for lots of appeals?

Anna Barton: I agree that a third-party right of appeal would affect how the whole planning system works. It would give communities, interest groups and other organisations confidence that planners must listen to their views and take them into account. Such a provision would also address the question of parity. It is important that the bill start off on a positive footing by telling developers, "Guys, you need to have consulted"—

Patrick Harvie: Do you think that the provision of a right of third-party appeal or the operation of appeals would have that effect? That is an important difference.

Anna Barton: I think that that effect would come from a right to a third-party appeal.

Jean Charsley: The issue to which people are drawing the Executive's attention is that planning is about not just promoting development but about regulating and scrutinising applications so that development does not take place in an uninhibited way that adversely affects people's lives. We need some scrutiny—in particular, we need a third-party right of appeal for situations in which the authority that is granting the planning consent is also an interested party. At the moment, the Scottish Executive cannot deal with that situation. It has only 26 officers and such complaints do not receive any attention. There are other areas in which just knowing that they could appeal would give people a great deal more confidence in the operation of the bill.

Mr Home Robertson: I am sorry, but I will play devil's advocate again. Is there a risk that a third-party right of appeal could become a device for protracted obstruction by pressure groups, for example? We have heard of cases in which communities have had terrible experiences and of cases in which things have worked out fairly well. Let us say that in Greengairs, for example, a good neighbour agreement had been thrashed out with the developer, there had been protracted discussions involving the local authority and a deal had been arrived at that the community agreed represented the right way forward. How would you like it if some pressure group from somewhere else altogether suggested exercising a third-party right of appeal in a bid to override something that had been thrashed out locally?

Ann Coleman: If another developer came in and threw such an agreement up in the air, it would be nice to have a third-party right of appeal in those circumstances. Pressure groups are subject to the same rules as other parties in the system. Anyone who wants to participate in consideration of a planning application at local level has to make their case on the basis of material considerations. The system is controlled at every stage. There would not be a huge difficulty in saying that certain criteria would have to be met before someone could appeal. Someone could come up with a reason for an appeal that no one else had thought of—for example, there might be an ancient well in their back garden that no one else knew about. There would be criteria to stop unnecessary appeals going ahead. Other parts of the system work like that, so why could not a third-party right of appeal work in the same way?

Harald Tobermann: Perhaps it is not an accident that I am sitting next to John Home Robertson, because I am going to be controversial as well. I, too, have doubts about a third-party right of appeal, partly because I have been involved in quite a few public inquiries, which would inevitably be the format for such appeals. A £30 entrance fee would be the least of the problems. To take part in a public inquiry takes up a huge amount of time, whether one has experts to hand or not. If one wants to take such an inquiry seriously, one has to commit one's life to it for a certain time. If possible, one would want to avoid such an inquiry.

We are all developers at one time or another. That is true not only when we do things to our houses, but whenever anything gets done on our behalf. In Edinburgh, for example, the local authority wants to build a new school at Portobello golf course, but the golfers do not want that. The people of Edinburgh are the developers, through the local authority, and we want a school to be built at that location.

How do we resolve such situations? If there was a third-party right of appeal, that would drag the process out even further. An inquiry might be necessary if matters could not be resolved any other way, but a third-party right of appeal would just put more spanners in the works and—most important—it would undermine the local democratic process. Whether we like it or not, we elect our councillors and they make the decisions. We have to live with that.

Instead of a third-party right of appeal, I favour an idea that I do not think has been discussed so far, which is that there could be a thorough audit procedure. Every local authority planning decision should be subject to a retrospective audit and a report by an independent commission similar to the Audit Commission. I believe that the degree of embarrassment that such a process could bring to

bear on decision makers would be a good check, which could be made more often than the four-yearly re-election cycle.

Mary Scanlon: Harald Tobermann has made a good point. When we talk about developers, we always assume that that refers to someone else, but when it comes to a new school, for example, we are the developers.

I want to make a point on the back of what John Home Robertson said. A third-party right of appeal could be used by one developer to stop another, which could reduce the supply of housing and increase prices.

Sandra White rightly mentioned the bill's provisions on the appeals process, the pre-application consultations, et cetera. There is another piece of guidance in the proposed planning advice note on community engagement. We have a paper on that today; I note that the steering group is currently asking community councils and other stakeholders how they can better engage in the process. The next meeting of that group is scheduled for mid-April. All the consultation, engagement and participation is not just about what is in the bill. Parallel to the bill, we have the new planning advice note, and we are not at the end of the line with that. Community councils and others are feeding into the steering group on the planning advice note, so can that address the need to ensure that engagement will be positive and constructive? If so, is there still a burning need for a third-party right of appeal?

12:45

Jean Charsley: Planning advice notes have no legal force, so they do not guarantee that we will get such engagement. I agree with what you said about engagement and about making people more aware of things so that we get a better result, but we still have a problem with some things, such as the example of the school on the golf course. Local authorities have problems that they have to solve, but their solutions conflict with other interests. In such cases, there should be independent discussion and arbitration because there will never be agreement between the communities that do not want developments and the authorities that do.

Desperation on the part of the local authorities needs to be addressed, as well as the sense of unfairness among the communities. Local authorities do not always take sensible decisions, so there must be some right of appeal to an independent authority. The proposals of the Royal Town Planning Institute for the public right of notification should apply, whether or not we have a third-party right of appeal, and the right of ministers to call in applications should remain.

Anna Barton: In talking about the third-party right of appeal, people seem to assume that objectors will come in right at the end of the process and use it in ways that could be construed as being malicious. Perhaps it could be built in that only people who had participated in the pre-application consultation and who had gone through some form of mediation could consider using such a right of appeal, and even then only in certain limited and legislated circumstances.

Roger Sidaway: This is my personal view rather than the Scottish Mediation Network's view on the third-party right of appeal. I am sympathetic to it, on the grounds that have been mentioned—equity, parity of power, and so on. It would take into account the views of communities in general much earlier, so I would support it.

A point that has not been made is that the third-party right of appeal exists elsewhere. Does not it exist in Ireland? I know that it exists in Victoria, Australia. Surely, we could ask for guidance on how it works in practice.

The Convener: I am sure that the Executive has reflected on that. Also, in their evidence to the committee, other witnesses have related their impressions of how the third-party right of appeal works in other parts of the country. The committee will need to reach a conclusion on that matter, taking into account all the evidence that we have heard.

Petra Biberbach: I would like to respond to Mary Scanlon's point about the planning advice note, which was mentioned earlier. Planning advice notes do not have statutory power but they are followed carefully by people in the planning profession, who rely on them. We welcome the fact that there is to be a planning advice note on community engagement, which will take ideas from communities and the work that the committee has been doing. We should not underestimate the tools and assistance that we are being given.

The Convener: Thank you. That concludes the committee's questions to you.

Roger Sidaway: I commend the committee on the layout of the room and the way in which this dialogue has developed, which has illustrated the advantage of taking a consensus-building approach.

The Convener: Thank you very much.

Jean Charsley: May I just draw the committee's attention to serious omissions from the bill? I make the point on behalf of local planning authorities. Some matters have been omitted from the bill that planning authorities feel must be dealt with. Those omissions will affect communities' regard for the bill. I mention such issues in our submission, so I will not go into them now.

The Convener: The Convention of Scottish Local Authorities will be witnesses at our next meeting, so we will hear directly from local authorities.

That concludes the committee's questions. I thank the witnesses very much for their participation and ask them to leave as quickly as possible. Committee members should remain in their seats so that we can conclude the committee's business.

Petition

Mobile Telephone Masts (Residential Areas) (PE924)

12:53

The Convener: The second item on our agenda is PE924, by the Cumbernauld mast relocation group. The petition calls on the Scottish Parliament to urge the Scottish Executive to ban the siting of third-generation and terrestrial trunked radio masts in residential areas until all the evidence that suggests that they are a health risk has been examined by Parliament.

As with similar petitions that we have considered, the committee is invited to agree that the issues that are raised in the petition should be taken into account in the committee's consideration of the Planning etc (Scotland) Bill. No further action should be taken on the petition on the basis that the issues will be taken into account as part of that consideration. Do members have any comments, or do you agree to that course of action?

Cathie Craigie: I am happy to go along with the course of action that you suggest, convener. We have discussed such issues at previous meetings, and I hope that we will take the petition into consideration as we work on the bill. The petitioners' main concerns are to do with health. I hope that the clerks will make health evidence available to the committee so that we can take it fully into consideration when we make our recommendations on the principles of the Planning etc (Scotland) Bill.

Patrick Harvie: I agree. Although we can consider the petition and one or two others, and can bear in mind the issues that they raise, the bill is not really the right place in which to introduce regulation for a specific type of development. The right place would be in Scottish planning policies. Can we find out from the Executive whether there will be a specific SPP to deal with telecommunications and, if so, when that might be expected?

The Convener: I have just been told that there is one. However, we will have to pursue the points that both members make with the minister when he or she comes to give evidence to the committee.

Do members agree that we should take the course of action that I laid out?

Members *indicated agreement.*

Mineral Working (Draft Scottish Planning Policy 4)

12:55

The Convener: The third agenda item is a paper on draft Scottish planning policy 4, which is on mineral working. The committee is invited to consider its approach to SPP4. The paper summarises the issues that emerged in the Scottish Executive's consultation on the draft policy. Given the relatively limited number of issues that emerged from the consultation, it is suggested that the committee may wish to take up the issues for communities by letter. What are members' comments on the proposal?

Patrick Harvie: Are the responses to the consultation available in the Scottish Parliament information centre? I had trouble finding them on the Executive's website.

Euan Robson: I would be grateful if we could include in the letter two issues about the recycling of secondary materials that were not, funnily enough, raised in the consultation as far as I am aware. Can we ask the minister to give us an indication of progress on recycling? Also, in the light of recent developments, can we ask for a review of the draft policy to decide whether it could provide better advice on dust suppression, which is an immensely important issue at several mineral workings?

The Convener: On Patrick Harvie's question, the clerks advise me that the responses to the consultation are available on the Executive's website.

Christine Grahame: There is a navigation problem.

Patrick Harvie: The search function is not working.

The Convener: I agree that it can be extremely difficult to find documents on the Executive's website—I have had similar experiences. However, the clerks will provide the member with a link, which will help him to find the responses as quickly as possible.

Do members agree to write to the minister on the issues that members of the public and interested parties have raised and on the two points that Euan Robson raised?

Members indicated agreement.

Meeting closed at 12:58.

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