# COMMUNITIES COMMITTEE

Wednesday 22 March 2006

Session 2

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## COMMUNITIES COMMITTEE
**9th 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)
*John Home Robertson (East Lothian) (Lab)
Tricia Marwick (Mid Scotland and Fife) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)

**COMMITTEE SUBSTITUTES**

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

*attended

**THE FOLLOWING ALSO ATTENDED:**

Johann Lamont (Deputy Minister for Communities)

**THE FOLLOWING GAVE EVIDENCE:**

Councillor Trevor Davies (City of Edinburgh Council)
Councillor Willie Dunn (West Lothian Council)
Richard Hartland (West Lothian Council)
Councillor Gordon MacDonald (East Dunbartonshire Council)
Councillor Eddie Phillips (East Renfrewshire Council)

**CLERK TO THE COMMITTEE**

Steve Farrell

**SENIOR ASSISTANT CLERK**

Katy Orr

**ASSISTANT CLERK**

Catherine Fergusson

**LOCATION**

Committee Room 4

# Scottish Parliament

## Communities Committee

*Wednesday 22 March 2006*

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

## Subordinate Legislation

### Charity Test (Specified Bodies) (Scotland) Order 2006 (draft)

### Protection of Charities Assets (Exemption) (Scotland) Order 2006 (draft)

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

Unfortunately, I must tender a number of apologies. Tricia Marwick is unable to attend the meeting, so we will be joined later on by her substitute, Sandra White, who has another committee meeting to attend first. Mary Scanlon has also indicated that she will be late and Cathie Craigie is unable to attend because of a family bereavement.

The first item on the agenda is consideration of the draft Charity Test (Specified Bodies) (Scotland) Order 2006 and the draft Protection of Charities Assets (Exemption) (Scotland) Order 2006. I welcome the Deputy Minister for Communities, Johann Lamont, who is accompanied by Sian Ledger and Laura Bailie from the Scottish Executive's Development Department.

As members are aware, the draft orders are subject to the affirmative procedure, so under rule 10.6.2 of standing orders the minister is required to propose by motion that the committee recommend that each of them be approved. The first motion is motion S2M-3992. Committee members have copies of the draft order and the accompanying documentation. I invite the minister to speak briefly to the draft order, but ask her not to move the motion just yet.

**The Deputy Minister for Communities (Johann Lamont):** I am pleased to be here; I am even more pleased to be here to talk about charities rather than planning—those discussions lie ahead of us. Returning to the Communities Committee is like visiting an old friend and I am grateful to have the opportunity to speak to the two draft orders on the agenda.

The committee will recall its discussions on the independence test and the non-departmental public bodies for the five national collections during last year's consideration of the Charities and Trustee Investment (Scotland) Bill. Concerns were raised that the National Galleries of Scotland, the National Library of Scotland, the National Museums of Scotland, the Royal Commission on the Ancient and Historical Monuments of Scotland and the Royal Botanic Garden Edinburgh would fail the charity test because of the powers of direction that ministers hold in relation to them. Those powers could not be removed because it was felt important that ministers retain some form of control over the collections that they hold in trust for the nation. Therefore, at stage 1 I agreed to lodge amendments that would allow the five bodies concerned to meet the charity test while continuing to be subject to ministerial direction. The bill was amended to allow ministers to exempt bodies from the independence test by order. The result is the draft Charity Test (Specified Bodies) (Scotland) Order 2006.

**The Convener:** Do members have any questions for the minister?

**Members:** No.

**The Convener:** As the committee seems to be quite content, I invite the minister to move motion S2M-3992.

*Motion moved,*

That the Communities Committee recommends that the draft Charity Test (Specified Bodies) (Scotland) Order 2006 be approved.—[*Johann Lamont*.]

*Motion agreed to.*

**The Convener:** We will now deal with motion S2M-3993. Members have copies of the draft Protection of Charities Assets (Exemption) (Scotland) Order 2006. I invite the minister to speak briefly to the draft order, but ask her not to move the motion at this point.

**Johann Lamont:** The second draft order relates to section 19 of the Charities and Trustee Investment (Scotland) Act 2005, which protects the charitable assets of bodies that have been removed from the Scottish charity register either by choice or because they no longer meet the charity test. It will ensure that the Office of the Scottish Charity Regulator retains its regulatory powers in relation to those charitable assets and will allow OSCR to transfer them to another charity.

Concern was expressed that if the NDPBs or the further or higher education institutions were to stop being charities, OSCR could transfer their assets to other charities. That would jeopardise the services that those bodies provide, which are

funded by the public purse, so at stage 2 an amendment was lodged to allow ministers to exempt bodies from section 19. The Protection of Charities Assets (Exemption) (Scotland) Order 2006, which has been made under section 19 of the 1995 act, will ensure that assets that are funded by the public purse will remain under ministerial control in the event that any of the NDPBs or the further or higher education institutions were to lose their charitable status.

**The Convener:** As members have no questions, I invite the minister to move motion S2M-3993.

*Motion moved,*

That the Communities Committee recommends that the draft Protection of Charities Assets (Exemption) (Scotland) Order 2006 be approved.—[*Johann Lamont*.]

*Motion agreed to.*

**The Convener:** I ask members to agree that we report to the Parliament our decision on the two orders. Is that agreed?

**Members** *indicated agreement*.

**The Convener:** I thank the minister for attending our meeting.

## Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2006 (SSI 2006/64)

**The Convener:** Item 2 on the agenda is consideration of SSI 2006/64, which is subject to the negative procedure. Members have received copies of the order and the accompanying documentation. The order provides that, for the financial year 2006-07, local authorities should continue to set at nil any estimate for the amount that they will transfer from their general funds to their housing revenue accounts. The Subordinate Legislation Committee has reported that it did not need to draw the Parliament's attention to the order on any of the grounds that are within its remit. Do members have any comments?

**Members:** No.

**The Convener:** Is the committee therefore content with the order?

**Members** *indicated agreement*.

**The Convener:** That being the case, the committee will make no recommendation on the order in its report to the Parliament. I ask members to agree that we report to the Parliament our decision on the order. Are we agreed?

**Members** *indicated agreement*.

**The Convener:** We will have a brief suspension to allow our witnesses for the next agenda item to join us.

09:37

*Meeting suspended.*

09:39

*On resuming—*

# Planning etc (Scotland) Bill: Stage 1

**The Convener:** Under item 3 on the agenda, the committee will hear evidence from the Convention of Scottish Local Authorities on the Planning etc (Scotland) Bill. I welcome the panel, which comprises Councillor Trevor Davies from the City of Edinburgh Council, Councillor Gordon MacDonald from East Dunbartonshire Council, Councillor Eddie Phillips from East Renfrewshire Council, Councillor Willie Dunn from West Lothian Council, who is COSLA's spokesperson on economic development and planning, and Richard Hartland, who is West Lothian Council's development and building control manager. Thank you for joining us this morning.

I will start our questioning. Do you believe that the Scottish Executive consulted effectively on the bill?

**Councillor Willie Dunn (West Lothian Council):** Yes. I think that we all agree that there has been a lot of consultation, with individual councils and with COSLA as a whole. Certainly, we had a number of meetings with officials, the Minister for Communities and the Deputy Minister for Communities. Any information that we requested or required from the Executive was given to us. From COSLA's point of view, the consultation was very successful on this occasion.

**The Convener:** The committee has heard considerable evidence on the need for culture change if the bill is to be successful. Do you believe that local authority staff and elected members are up to playing their part in that culture change?

**Councillor Dunn:** Yes, we are. Certainly, there is a change in local government culture; it has been going on now for a number of years. We welcome many of the provisions in the bill and embrace the need for the culture change that will drive forward our planning system. We will have to work in partnership with the private sector, including developers, to ensure that that change is a whole culture change and not one that happens only in local government. Perhaps some of my colleagues want to chip in on the subject.

**Councillor Trevor Davies (City of Edinburgh Council):** We would like culture change in the Scottish Executive too; that would be immensely helpful. In Edinburgh, we find that the slowness in the system often comes from the Scottish Executive inquiry reporters unit. There needs to be a substantial shift in behaviour in that regard.

One of the important things that the Scottish Executive could do, working with councils, is to help with skills—training and that kind of area. I am sure that we would all sign up for education, not regulation.

**Councillor Dunn:** I echo that. There needs to be a culture change across all Executive departments. We have huge problems in respect of structure plans and local plans. For example, the structure plan for West Lothian was passed by the council and then agreed by the Executive. Part of the plan involves a ramp off the M9. Another part of the Executive—with responsibility for roads—is objecting to that. There has been no cross-chat between departments in the process. We are left in the position where a structure plan that was passed by the Executive is being held up because of an objection to a local plan by another part of the Executive. The culture change that needs to be made is not only in local government; we all have to work together and discuss the issues. We need to ensure that government at all levels is better joined up and that we also join in with the private sector.

**The Convener:** Practically every panel of witnesses has touched on culture change. Although people may not always say that they are the ones who have to be part of that culture change, they say that everybody else should be. It has become apparent to all members of the committee that everyone needs to sign up to culture change.

I turn to transparency. It has been suggested that elected members are not as knowledgeable about what is being proposed as they should be, although that is not my experience of my local council. As representatives of local government, how do you respond to that charge?

**Councillor Dunn:** That we are not aware of the changes that the bill will make?

**The Convener:** Yes.

**Councillor Dunn:** At my authority, the councillors who sit on the planning committee are given training and kept up to date with changes in policy. We also go on site visits and talk constantly with officers. When a change such as this comes through, it comes through the council before going to a parent committee—all councillors are aware of it. West Lothian Council had a day session on the bill for all councillors, not only the planning committee, at which our planners explained the changes and how the bill would affect the planning system.

It is equally important that all councillors are informed, whether or not they are members of the planning committee. Councillors are often asked to represent people at planning committee meetings, or to advise on a planning issue. Our planning

department regularly holds information sessions for elected members. Of course, elected members also seek guidance from officers, as and when issues come forward, and we all get copies of bills and circulars as they are issued. That is how our authority does it and I am sure that my colleagues from other authorities do the same. COSLA has also sent circulars to elected members in local authorities to make them aware of changes to the planning system and, indeed, to inform them of the system itself.

The point is that, when an elected member assumes office, they should be given a proper induction not just into the planning system, but into the different areas of local government to ensure that they are equipped to make decisions. Moreover, if they do not feel equipped in that respect, they should have a route for seeking further advice from officers.

09:45

**The Convener:** Concerns have been expressed about the fact that much of the detail of the bill's provisions will be left to secondary legislation. What is COSLA's view on that?

**Councillor Dunn:** COSLA has agreed that the detail will come in secondary legislation. After all, that is the nature of such bills. We are content with the level of information that we have received on this part of the bill. We are concerned about certain upcoming matters but, as they always say, the devil will be in the detail. We realise that there will be a second stage to the process and that more detail will be forthcoming.

As I have said, given the bill's structure and how it has been introduced, we are reasonably comfortable with the level of information that we have received up to now. We do not have every bit of detail, but we would not expect to at this point. That will come through the secondary legislation.

**Euan Robson (Roxburgh and Berwickshire) (LD):** Considering resources, delivery and assessment, how long should the implementation phase for the legislation be? Have you given any evidence to the Executive on how long the transition from one system to another might take? Should that process take a longer or shorter time?

**Councillor Dunn:** The politician in me would want everything to change tomorrow. That said, I realise that, with such a major change, there must be a transition period—although the quicker it is, the better.

On resources and, indeed, the whole cost to democracy, we have to ensure that when the system is introduced it is fully funded. As a result, there will have to be a transition period. I cannot say whether it will last two weeks, six months or a year; however, I would like it to be over as quickly as possible. That can happen only if everyone is on board when the changes are introduced.

The issue of resources is important because some of the bill's provisions will require local authorities to provide extra resources. Whether the resources come from the developer or whether the local authorities have to find the funding themselves, more staff will be needed to deal with the changes. We might find it difficult to recruit that staff, which would hold up the whole process. As a result, we must ensure that the bill's provisions are properly resourced and that investment is made to allow us to recruit planners and so on and to get staff on board as quickly as possible.

That said, it will take a long time for developers and members of the public who are submitting applications to accept this culture change and the fact that a different system has been introduced.

**Councillor Davies:** I should point out that we are already beginning to deal with these matters. For example, my local authority has started work on pre-application consultation for major developments. That approach is paying substantial dividends; for one thing, the quality of applications has improved.

Money is one thing, but the problem is that we might not have people who are skilled in this work, and it will take a long time to improve those skills and to increase the number of skilled planners in the system. The Scottish Executive has made no firm proposals on that matter. We can get money but, unless the number of skilled people increases, we will simply have to move vacancies around the system.

**Euan Robson:** In that case, we should talk about resources. In your submission, you say that at the moment the performance of planning authorities varies. Have you carried out any global assessment of the scale of the need for resources? Have you been able to tell the Executive how much money will be required?

**Councillor Dunn:** I will ask Richard Hartland to answer that technical question.

**Richard Hartland (West Lothian Council):** That question will be difficult to answer until we see the secondary legislation and find out exactly how much will be required to make everything fit. However, one vital point that my councillors have been discussing is that we are not starting from a level playing field as far as resources are concerned.

Planning authorities tend to be under-resourced but we are going into a new system. We have to build from what is almost a resource deficit. We must be careful about that. It is a resource deficit in terms of bodies on seats and, I would suspect, a

resource deficit in terms of skills. We must address the fact that we are finding it difficult to recruit. We can talk about resource in terms of cash and in terms of bodies, but we must remember also to talk about resource in terms of skills.

**Euan Robson:** Is what is outlined in the financial memorandum sufficient? As there will be some streamlining in the system and as some processes will no longer be there, will there be an opportunity to save some staff time and resource?

**Councillor Dunn:** Yes. One of the issues here is e-planning and online applications. We already do that in West Lothian so there are no savings to be made for us, but in some authorities there are potential savings. That has to come with investment though. To make it work, equipment must be upgraded and there must be information technology back-up and so on. We were in a fortunate position in that we had an okay IT set-up, which pushed us forward when it came to putting applications on the web and so on. That has been successful, but no more resources are going into the planning department now than were previously; recruitment difficulties mean that we still do not have the bodies to do the work.

**Councillor Gordon MacDonald (East Dunbartonshire Council):** The other thing to remember is that although there will be some streamlining, additional burdens will also be placed on planning authorities.

**Euan Robson:** You commented on the implications of strategic environmental assessment. What are the resource implications? SEA is one of the additional burdens that councillor MacDonald referred to.

**Councillor Dunn:** The implications are significant because SEA affects everything that we do as a local authority.

**Richard Hartland:** We have already had an indication of its impact. We must accept that there never seems to be a good time to do a local plan. Something always seems to inhibit its progress. Some authorities are well down the line in bringing on the latest local plan—that is certainly the case in West Lothian—but we had to apply for exemption from SEA regulations because they would have unacceptably delayed the local plan. We are trying to regain public confidence in the planning system and we would have lost it if that delay had occurred. Luckily, we got the exemption. SEA is a substantial piece of work that local authorities must have regard to in relation to land-use policy. I think that the implications of SEA will be significant.

**Councillor Dunn:** What is also significant is the time that it will take to deliver things. Richard Hartland is correct. West Lothian Council got an exemption because our local plan was that far down the line, although I hasten to add that that does not mean that we totally ignored some of the issues. SEA will mean that the local plan process could be slowed down, but we want to speed up the planning process and make it friendlier for the public. Although SEA could slow down the planning process, it does have an important part to play.

**Councillor Davies:** The City of Edinburgh Council had estimated about a year's delay, based on current resources, because of the SEA requirements.

**Euan Robson:** That is helpful.

We have heard evidence on the planning fee structure and it is suggested that although fees could rise, that would be acceptable to developers if the system became faster and more coherent. Does COSLA have any views on the type of fee structure we should have? Clearly, that will be a contributing factor to the resource issue.

**Councillor Dunn:** COSLA would like to see fees rise significantly to fund the process. Developers would too, if we deliver a quicker and more efficient planning system. A structure in which more is paid by bigger developers and for bigger developments in return for a quicker response time is one that we should consider. The old socialist in me is saying, "Well, is that rich people paying for a better service?" I do not think that it is. I think that what we are doing here is using the system to cross-subsidise some of the other parts of the planning system.

That will mean that the big strategic developments in all our areas will be delivered more quickly and effectively, which will drive forward our economy. A fee structure that is aimed at charging more at the top end for a faster and better quality service will help subsidise the system and will give us what we want, which is a good planning system that is robust, fair and open and delivers quickly in terms of driving forward the Scottish economy.

**Councillor Davies:** Last year, I asked for some work to be done which calculated that fees contributed 27 per cent of the total cost of Edinburgh's planning service.

**Euan Robson:** Has COSLA done any calculations around those figures? Could a major increase in fees make a much bigger contribution to overall planning costs?

**Councillor Dunn:** I am not aware of any collective work being done on that, but we could co-ordinate some calculations and submit that information to the committee.

**Euan Robson:** That would be helpful.

**Councillor Davies:** The minister has a working party that some of our staff are on. Perhaps Mr Hartland can help to work out some of the details of the financial arrangements.

**Richard Hartland:** A number of authorities are doing some research. You have asked similar questions of professionals in previous committee meetings. That information is being formulated and will be presented to you.

**Euan Robson:** In summary, you think that the bill will provide a step change, increase performance and result in a better and more transparent system, but you have concerns about resources and the human capital that is available.

You mentioned, in passing, the Scottish Executive's performance and the question of delays in the reporters unit in particular. Is that the sole area of difficulty or are there other areas in which the Scottish Executive should improve its performance?

**Councillor Davies:** Two things concern us. One is the delay with regard to reporters. In Edinburgh, there is a site in Morrison Street by Haymarket station. We refused an application for that site, but approved it when it was resubmitted with changes. It was called in by ministers and it was 15 months before we got a decision back. That is way in excess of any delay that would ever occur in any local authority.

The second issue that concerns us is the lack of joined-upness. For instance, there is a disjunction between planning and transport in the Scottish Executive. That causes us a lot of difficulty around section 75 payments and other matters. In West Lothian, a situation is giving rise to difficulty in that regard.

**Euan Robson:** You have a difficulty with the speed of the process and with the coherence of communication between departments.

**Councillor Dunn:** Yes. There is also an issue about the need for other partners with whom we work, such as the Scottish Environment Protection Agency, to be more geared towards a quicker system. If we want to get the system to work, we have to make sure that everyone is more responsive. We talk about delays in the planning system but, a lot of the time, it is not local authorities that are causing the delays but some of the people we have to consult.

**Euan Robson:** What are your views on the proposed introduction of a mandatory system of auditing planning authority performance? Witnesses have said that that is a useful and helpful step. Is COSLA happy with that proposal?

**Councillor Dunn:** Yes, the proposal is useful, as long as the system is fair and balanced. In some areas, performance will be better than in others. That does not necessarily mean that one area has a much better planning department; it might be that, in the area in which the performance is not as good, some of the partners or processes are slowed down by external people.

If the system takes a fair and balanced view of the internal workings of the local government organisation and its part in the planning process, that is fair enough; we all have to be assessed and we all have to have the ability to improve. We need to benchmark ourselves against each other. That happens at the moment. Local authorities compare the time that it takes them to turn around an application with the time that it takes other local authorities to do so. However, there are many hidden aspects that are outwith the control of local authorities that can slow down performance.

10:00

**Euan Robson:** So you would say that benchmarking is important to ensure that there is no slow ship in the convoy, if I can put it that way, and that everyone is contributing to the overall objectives and ethos.

**Councillor Dunn:** Obviously, we want there to be no slow ships, so that we all move at the same pace. In the real world, that will not happen, but we want to ensure that the lead ship is not too far away from the one at the back. We want the delivery functions of local government to be consistent throughout Scotland.

**Patrick Harvie (Glasgow) (Green):** I have some questions about public involvement and rights of appeal. You mentioned on a number of occasions in your submission that COSLA's position is that it does not support wider rights of appeal. We have heard evidence in favour of wider rights of appeal. Many people who take part in consultations and what have you and who end up opposing planning applications feel that it is unfair that if the application is refused, the applicant gets another crack at the whip, but if it is approved, objectors do not. It is not just that they want to be heard—they also feel that there is unfairness in how decisions are made. Does COSLA recognise that sense of unfairness? How can it be overcome?

**Councillor Dunn:** I understand people's frustrations when they see the current planning system in motion. COSLA's view is that the bill will make the planning system far more robust and will include public consultation at every step of the way. Therefore, individuals will not feel disenfranchised at the end of the planning application process.

When we at West Lothian Council were developing our structure plan, we had a number of public meetings about the plan at which we made

presentations on new developments. Members of the public came and saw exactly what developers were proposing. That also happened in workshops on the structure plan, which came to my committee three times to be amended and approved. The public offered input to the plan, which was then agreed by the Executive.

We followed the same process for the local plan. We ran workshops with community councils and members of the public and we held developer presentations to show what the big developments—2,500 and 3,500 houses—and the other developments would be like. We went out to public consultation on the plan which, again, came to my committee two or three times. The public were involved and the plan then went back out again—

**Patrick Harvie:** May I interrupt for a second? No one is saying that consultation is bad—many people are open to it. What I am asking about is the decision-making process. Is there anything in the bill that will give people the sense not just that they will have more chances to be consulted and to give their views, but that the decision-making process will be fairer than it is?

**Councillor Dunn:** That will depend on how the current system is dealt with locally. West Lothian Council's planning committee meetings are held in public—people can come along and speak to the committee, put their case and be involved in the process. In an open and accountable manner, the planning committee—

**Patrick Harvie:** The crucial thing that creates the sense of unfairness is that members of the public can make their case only once whereas developers can do it twice.

**Councillor Dunn:** I think that that will remain the case. Nothing in the bill will change that, but we have to make the system robust enough so that people feel included at every stage of the process.

At the end of the day, somebody somewhere has to make a decision on a planning application. Such decisions are made by democratically elected members on planning committees and if those elected members do something very wrong, the third-party right of appeal against them is at the ballot box. If elected members make decisions about planning issues but do not listen to the public, democratic accountability applies to them but not to the developer.

**Patrick Harvie:** I ask for the convener's guidance. I was going to ask a supplementary question—under the development planning section—about democratic accountability. However, as it has been raised now, I hope that we have time to pursue it.

**The Convener:** Yes.

**Patrick Harvie:** On several occasions—I am sure that other members will have heard the same—I have been asked about the role of democratically elected local councillors in the planning system. Are they there to represent the views of the people who elect them or are they there as neutral arbiters? For example, if a particularly contentious issue arises in a ward, can councillors affect the outcome by changing how they vote? If the councillor for that ward is on the planning committee, he or she is not able to express a view on the application prior to taking part in making the decision. On the other hand, if the councillor is not on the planning committee, he or she will not take part in making the decision. Where is democratic accountability in that process? How might the role of democratically elected councillors change with the introduction of multimember wards? Is inter-party co-operation likely or possible in some parts of the country?

**Councillor Dunn:** On the last question, you never know—the introduction of multimember wards might have the opposite effect.

The answer that I will give to the first question may sound like a politician's fudge, but it reflects a view that I believe. The answer is that elected members must both work within the planning guidelines and take on board the views of people who will be affected by planning decisions.

**Patrick Harvie:** What if the decision is about an issue in another councillor's ward?

**Councillor Dunn:** Local authorities have collective responsibility for their areas. Sometimes councillors make decisions on planning issues that will affect their wards, and on occasion councillors are on the wrong end of planning decisions in their areas. We, as elected members, must try to strike the balance.

I offer as an example a decision on the siting of a new prison in West Lothian. The decision has not been easy. If you ask people in any area of Scotland whether they want a new prison they will—perhaps with the exception of Peterhead—say that they do not. In West Lothian, we had first to sell the land to the Executive. Of course, we did that properly. We then faced a planning application. A number of people on the periphery of the site were against the application. Elected members had to make difficult decisions because the proposed prison was strategically important for Scotland, its construction would drive our economy forward and it met the planning criteria. However, we had to take on board the concerns of local people. That decision was in favour of the development, but in other cases the views of local people have won out: people often make sound arguments. Richard Hartland, our planning

director, has been overturned regularly in the planning committee by local members, who have based their decisions on representations by the public, who have made good and sustainable cases.

Our role is to listen to the views that are expressed and to make a balanced judgment. The professionals will take a professional view on a planning application, but elected members will—I am sorry, Richard—take a more human view on a planning application. It is not easy to sit on a planning committee.

**Patrick Harvie:** Is not there a problem in respect of councillors' being unable to take part in a planning committee's decision-making process if they have expressed a prior view? Does not democratic accountability come when people have the right to ask candidates what they think about contentious issues that might arise and how they intend to vote?

**Councillor MacDonald:** In East Dunbartonshire the other week, a councillor had to declare an interest because of views that he had previously expressed on a planning application. However, he did not have to express his views: to do so was his choice. He chose to express his views in advance of the planning board meeting. We have an all-member planning board. As a result of expressing his views, he disenfranchised himself in relation to the decision.

Members of planning boards or planning committees must exercise responsibility. We know that we sit in quasi-judicial form. We are not there purely as elected representatives of our constituents, although each of us must bear that dimension in mind, especially—as Willie Dunn said—if we want to get re-elected.

**Councillor Eddie Phillips (East Renfrewshire Council):** There is clearly a dichotomy in respect of councillors' responsibilities and the standards that they are expected to perform up to, given the conflict of interests that arises for a councillor who is an elected member of a planning committee but who may have to declare an interest and may not be able to participate in certain discussions. That needs to be addressed, because it can distort the system.

I know of a case in which the councillor for a ward in which there was a local campaign on a planning issue was, because he was not able to register his view in public, branded as being against the position of the campaigners. As a result, he lost his seat to someone who was unable to participate in the planning issue for the same reason.

**Councillor Davies:** I am not sure whether the way in which Mr Harvie phrased his question can lead to a useful answer. He suggested that we are either independent arbiters or representatives of the people who voted for us. In fact we represent the best interests of the whole of Edinburgh, which is different from representing only the people who voted for us.

As members know, I am convener of Edinburgh's planning committee. A lot of building is going on in my ward, but many of my constituents are now used to the role that I have to play. I ask them, "Which would you rather have—a representative who is convener of the planning committee, who cannot campaign but can listen and help to make decisions, or a representative who can only campaign?" They would rather have the convener of the planning committee, thank you very much.

One of the first things that happened when I was elected and became convener of the planning committee was that a huge development was proposed for my ward. It was recommended for approval by officials, but the committee turned it down. We went through an appeal and won. The locals really felt that we were on their side. I do not have a problem with the situation. I represent the people of my city in the judgments that we make—not just the people who are objecting, but everybody. That is our role.

The committee might disagree with me about the effect of multimember wards on the process: I think they will be a disaster. Under the new system, there will be four councillors on my ward. I might still be both a councillor and convener of the planning committee. If councillors from other parties campaign on particular issues for purely political reasons, it will be difficult to make judgments within that context.

**Councillor Dunn:** To be fair, politics are usually kept out of planning committees. Only once or twice in my time in West Lothian have people voted along party lines. Sometimes, one ends up voting with the strangest people because one has a particular view on a particular subject. That is healthy. People understand their responsibilities and there are no group whips.

**Patrick Harvie:** I am sure that many members of the Scottish Parliament can identify with that experience. [*Laughter.*] I hope that the message for the public is not, "Buy a house in the ward of the convener of the planning committee."

**Councillor Dunn:** There would not be any houses built. There would be only green fields.

**Patrick Harvie:** On the widening of rights of appeal, your submission states:

"COSLA's member authorities have expressed different views on this issue, but the majority have opposed the proposal."

How broad is the range of views and how big is the majority?

**Councillor Dunn:** Four authorities support some form of third-party right of appeal, although not a blanket right.

**Patrick Harvie:** Are the rest of the authorities closed to the idea?

**Councillor Dunn:** I would not say that they are closed to the idea, but they believe that, because the bill will create a robust planning system, there is less need for a third-party right of appeal.

**Patrick Harvie:** I would like to move on to the national planning framework.

**The Convener:** Before you move on, Mary Scanlon has a brief supplementary question.

**Mary Scanlon (Highlands and Islands) (Con):** I think that I probably belong to the "strangest people" category, in Willie Dunn's eyes.

The committee has heard from many community councils and local representatives, who often say that the culture of their planning departments will never change, that the system is very adversarial and that there is nothing in the bill that will give them the right of appeal that they need. How would you reply to that?

**Councillor Dunn:** I would not hear that comment from people in West Lothian.

**Mary Scanlon:** I realise that your council is absolutely perfect—

**Councillor Dunn:** I would not say that we are perfect, just quite good.

**Mary Scanlon:** What about the other authorities in Scotland?

10:15

**Councillor Dunn:** To an extent, people feel disenfranchised in relation to planning and do not particularly understand it. West Lothian Council will soon consult community councils on the planning process. A report on that has come to our enterprise and development committee, which I convene. Our aim is to consult community councils more regularly and to brief them more regularly on their role in the planning process. With enactment of the bill, it will become important for all authorities to do that, so that community councils are aware of the important role that they play in the planning process. We operate the delegated-authority procedure in West Lothian, but one of the triggers for an application to come to the committee is an objection from a community council. We try to empower and involve community councils. We encourage them to be involved at all stages of the development plan process.

For example, the local plan for the East Calder area in West Lothian includes proposals to build 2,500 houses, but there has been no objection from a community council. In the plan for the Winchburgh area, there are proposals to build 3,500 houses, but there has been no objection from the community council. There are proposals to build 2,000 houses in West Calder, but there has been no objection from the community council. Concerns have been expressed about the shape of the houses and about schools and infrastructure, but the community councils do not object to the developments; we have talked with them about the matter for the past four or five years and have ensured that they have been involved at every stage of the process. The bill will encourage use of such a system in other parts of Scotland. Local development plans could be incredibly important for the future of every area, but the way to achieve that is to ensure that there is buy-in from communities.

**Mary Scanlon:** Are you confident that the culture and best practice in West Lothian will spread throughout Scotland? The aim is to bring back a bit of trust and confidence and to allow community councils to feel that they have a voice and are being listened to. Local authorities may not agree with community councils in every case, but they must feel that their thoughts have been taken on board. Are you confident that the bill will change the present situation?

**Councillor Dunn:** Yes—I believe that it will. Different models will be needed in different areas, depending on the type of issues that arise. The bill strives to engage the public more in the process and to make people feel that they have a real part to play, not just at the meeting during which applications are considered, but well in advance of applications' being made. The aim is to give people the ability to shape their communities for the next 10, 15 or 20 years.

**Councillor MacDonald:** The key is to involve community councils in drawing up development plans. Although four councils, including mine, dissented from the majority view in COSLA on the issue, there is consensus that a general third-party right of appeal would be a bit of a disaster for local government, given the resource implications. The committee and the Executive must consider what extra resources a general third-party right of appeal would involve. In an area such as East Dunbartonshire, where we have a very articulate community, many third-party appeals would be made to the Executive just because people did not like decisions. That must be borne in mind.

**Councillor Phillips:** It must be appreciated that community councils have some expertise in planning matters, but there remains a huge need to train community councillors in the planning

system. An understandable lack of knowledge exists on the issue, which must be addressed if we are to have—let us say—a discussion among equals.

**Patrick Harvie:** In general, what are COSLA's members' views on the impact of the national planning framework? Will it provide a national overview of development in Scotland?

**Councillor Dunn:** We welcomed the suggestion for a national planning framework when it was made in 2004—it is a good idea. It is probably too strong to say that we have a concern, but the framework must constantly be kept up to date and relevant to particular areas. I will use an example from my area. The development and economic plans in West Lothian had been running along nicely, but I woke up one morning last April to find that 3,500 jobs had gone at Motorola and five months later I found that 900 jobs were going at NEC. We had to radically change the focus of our actions. The national planning framework is welcome, but it has to be relevant and it has to be flexible enough to cope when a change of emphasis is required in an area.

**Councillor Davies:** The framework will have to be aligned with the investment plans of the various infrastructure agencies, such as the transport and water agencies—or rather, their investment plans will have to be aligned with the framework. If there is a mismatch, the framework will be useless. However, we welcome the framework; it will bring a great deal of clarity. It is absolutely right that decisions should be taken here in Parliament by ministers at national democratic level. I do not think that any of us have any difficulty with that.

**Patrick Harvie:** A suggestion that has come up during our discussions on the NPF—one on which there is greater agreement than I expected—is that, just as local authorities have a duty to consider sustainable development in their development plans, ministers should have such a duty in relation to the NPF. Do you agree?

**Councillor Davies:** Yes.

**Councillor Dunn:** Yes.

**Richard Hartland:** Yes.

**Councillor MacDonald:** Yes.

**Councillor Phillips:** Yes.

**Patrick Harvie:** Marvellous! That was easy.

I want to ask now about the process for developing and approving the NPF. In your written submission, you do not express a view on whether the 40-day period is too long or too short. However, I would like to take you through the steps of the process. The Executive develops a draft to be consulted on; various people express their views; a final draft is presented to Parliament; Parliament has some kind of scrutiny process—perhaps a committee process, or we might commission some outside public involvement; and then the full Parliament votes. Ministers have to take Parliament's views into account, but it will not be Parliament that signs the framework off, but ministers. Will that process lead to acceptance of the framework and to a sense that it is something for the whole of Scotland, rather than something that will be imposed on Scotland by ministers? Are you comfortable with the process?

**Councillor Davies:** It will depend on how the process is used, will it not? It will depend on the expertise that parliamentarians bring to their part of the process, and it will depend on whether, during the consultation period, ministers engage properly with local authorities, agencies, voluntary organisations and all the others with whom they will have to engage. If all that is done well, and if a sense of ownership develops, the process will work. Of course, the process could also be skimmed through, in which case people would end up being dissatisfied. That brings us back to our old friend culture.

**Councillor Dunn:** Is there a third-party right of appeal in the national Parliament?

**Patrick Harvie:** Do you feel that ministers' having to pay heed to the views of Parliament is sufficient, or should Parliament be responsible for approving the framework?

**Councillor Dunn:** That is a question for Parliament, surely, and not for me. Ministers should pay heed to Parliament, and I am comfortable with the process that has been described. Ministers should also take an overview because—let us face it—Parliament has been known to play politics. Proposals may be used for political reasons rather than for the greater good. In that sense, Parliament can be just like a planning committee. It is therefore correct that ministers will have the final say, but they must take on board the views of Parliament; that is as important as a local authority taking on board the views of the public.

I agree with Trevor Davies that the consultation period must be robust. The views of Parliament must be heard but so, too, must the views of local authorities and members of the public. Those views must then be fed in, through Parliament, to ministers.

**Patrick Harvie:** I have one question about the involvement of the public and one question about the involvement of local authorities. I will ask about the public first. In parts of the United Kingdom where there is some kind of spatial strategy, the process of involving the public is more formal than a consultation. There can be an examination, or some kind of forum, at which people can test their

arguments. Would such a process be positive for the national planning framework?

**Councillor MacDonald:** Would not that be something that a parliamentary committee would do?

**Patrick Harvie:** I am not sure that it would be entirely the same as a parliamentary committee inquiry. My mind is open on that, but—

**Christine Grahame (South of Scotland) (SNP):** You are not supposed to be answering questions.

**Patrick Harvie:** Do you agree that many people would want to go through a formal process rather than merely have opportunities to be consulted less formally.

**Councillor MacDonald:** People may well wish to have some sort of formal process. I would have thought that that could be achieved through the democratic mechanisms in Parliament. I do not know that it would necessarily need to be a public inquiry.

**Councillor Dunn:** There is democratic accountability in local authorities' making formal responses to consultation. The local authority should in my view, consult the public on their views. That can be done in a number of ways, but the authority as well as individuals should be able to feed into the process, which would enable democratic accountability in respect of a particular area's view on a particular policy or suggestion.

**Councillor MacDonald:** Ultimately, ministers face re-election every four years, too, which provides democratic accountability.

**Patrick Harvie:** I will leave that subject and ask about the role of planning authorities in contributing to development of the NPF. Will you say something about local authorities' experience of the first national planning framework and their ability to get involved in its development? Is work on the next NPF already being done in local authorities? Is the Executive on track in its work with local authorities on the next one, given that it is to be signed off in a couple of years?

**Richard Hartland:** The first national planning framework was an infant document; an awful lot of lessons have been learned from it. There was little, if any, consultation on its development and its imposition, as I would call it. The NPF should not be imposed, but should be a partnership document. The lessons that have been learned must be shown in the development of the second NPF in consultation with local authorities, communities and the development industry.

**Patrick Harvie:** Is that happening?

**Richard Hartland:** It is happening as part of the culture change. If authorities are advanced enough and conscious enough to embrace the bill, they should not be waiting for it be enacted before they respond but are putting things in motion now. If there are good ideas, let us not wait to be told to implement them; let us implement them.

**Councillor Davies:** The triumph of the first national planning framework was that it existed. We were all pleased to see it because it is the right kind of instrument. It would perhaps be an exaggeration to say that work is being done on the next one, but conversations are beginning—I am certainly hearing and taking part in them. However, I imagine that attention in the Scottish Executive has been on delivering the bill, after which it will move on.

**Patrick Harvie:** Are you concerned that if the bill is passed soon—as we expect it to be—there will not be enough time to fulfil the aspiration of introducing the next national planning framework in 2008?

**Councillor Davies:** We will all be pushed so we will all have to work hard. The NPF will be held up by the difficulty of joining up planning with transport in the Scottish Executive. The national transport strategy is in a different document from the national planning framework, which is foolish. They need to be one and they need to be made one through the same process of development, but they are not. As far as I can make out, that is to do with tribal warfare somewhere in the Executive. The issue needs to be dealt with firmly in the next national planning framework; otherwise, the difference will become ingrained, which would be to Scotland's detriment.

10:30

**Patrick Harvie:** I am sure that we can put that to the ministers when we have the chance. The COSLA submission says that you think that the NPF should be updated every three years. Can you expand on that and say, first, whether that is realistic and, secondly, why the NPF needs to be updated every three years, which would be more often than the local development plans?

**Councillor Dunn:** To go back to my opening remark, for the sake of relevance, the NPF must constantly change. There must be a permanent revolution going on within the NPF, which must be relevant to the economic and planning needs of a particular area at a particular time. We will have to resource that internally as well and be able to respond to that timescale. Our view is that updating the NPF every three years would make it more relevant all the time and would shorten the period in which it would be irrelevant to a local area's needs. It would be a push to keep it going and keep it relevant, with local plans being updated regularly as well. However, the issue for

us is how relevant the NPF is and how it fits into our five-year development plan cycle.

**Scott Barrie (Dunfermline West) (Lab):** Councillor Dunn's reference to five-year development plans has brought us on neatly to what I want to consider, which is development planning. Councillor Dunn, you said in your written submission that you were concerned about whether the plan could be delivered. Can you expand on that? Further, although I understand why a local authority would not want to be penalised if a delay was caused by external agencies, if the problem could be laid at a local authority's door, what would be wrong with penalising the local authority to ensure that the five-year development plan cycle was maintained?

**Councillor Dunn:** I am having a bit of a problem with my throat, but I will try to deal with the last part of your question first and perhaps get Trevor Davies to cover the rest. On punishing local authorities if they fail to deliver, if a local authority fails to discharge its duty wholly because of its own problems, I agree that it should be brought to task. However, if developers, the Scottish Executive or whoever else fails to discharge their duties to help us to deliver our five-year local plan, that, too, should be brought into the fray. If a local authority fails to meet targets solely because of its own problems and a failure in its systems, I agree that it should be brought to task. However, in a five-year development plan process, we must work with a number of different agencies and each can be as slow as the other, which will pull down the whole thing.

As Richard Hartland will tell you, I have been trying to drive forward West Lothian Council's development plan with our officers for five or six years. We have not had one for a while because of how the cycles work. The reporters have a role to play as well. We are going to have a public inquiry. Work for that will start in June and the public inquiry will start in August. I hope that, with a bit of luck, we might have our development plan before the committee prior to the elections next April. I started that process with the structure plan six or seven years ago and with the local plan five or six years ago. We have been driving hard, but the process takes a long time because of the different agencies with which we must work. We can be slowed down by, for example, a new policy coming from the Executive. If we are given a level playing field, we will accept criticism for failing to discharge our duties. However, we work with many people, who also need to get their heads in the game.

**Councillor Davies:** I think that the five-year plan is deliverable. We will not rewrite everything; amendments will come through. The plan will need resources, more skills and culture change, which we spoke about previously. To emphasise what Councillor Dunn said, we are not the only players in the system. We started writing the south-east Edinburgh local plan in 1999 and finished writing it in 2000. It got final approval only at the end of last year because of the process that we had to go through. There were two stages of reporting and all the rest of it. It is in that area rather than in the writing of the plan in the local authority that the plan is held up. It is good that the bill will cut down the number of stages. A plan will go from draft form to final form without a middle stage, which will help a lot. There are many other players in the game apart from the local authorities and they all have their part to play. The trunk roads authority, SEPA and others need to know that they must be part of the system.

**Councillor Dunn:** There is a balance to be struck in having five-year development plans. If we are serious about delivering economic development and growth, we need to keep plans relevant to market changes and the needs of the economy in our local areas. The problem is that, to balance out the democratic deficit, we need proper consultation to ensure that everyone whose life will be affected by the plan is consulted, but that is the part that slows us down.

Our nation's planning system could be used to ensure that we get ahead in the game. Given that the planning framework and local plans are the drivers for our economy, we should focus on making things happen within the five-year cycles, making the plans relevant and delivering the development that is needed in certain parts of the country much more quickly than happens at present.

To do that, we need a culture change not just in local government but among all players. We need to be able to look at the bigger plan so that we can say that, for example, we need 15,000 more houses in West Lothian to continue feeding the Edinburgh economy. That might mean doing X, Y and Z in our local area to provide schools and so on. However, the burden for such development lies not just on local authorities, albeit that they co-ordinate matters. All the other partners also need to get their heads in the game so that we can drive Scotland's economy forward. Otherwise, we will end up sitting in meetings in which we discuss a particular word in a development plan or a planning application while business develops elsewhere in the United Kingdom and Europe.

**Councillor MacDonald:** East Dunbartonshire Council has a high level of political and officer commitment to meeting the five-year timescale. The most recent plan took four and a half years to develop and was approved in February. However, we have not yet started on the next plan primarily because of the strategic environmental

assessment issues that were mentioned earlier. We will find it a challenge to meet the five-year target for the next plan, even though all of us—both politicians and officers—want to achieve it.

I think that the Executive would be better to concentrate on providing incentives rather than penalising people. The committee has already heard that, due to a shortage of planners, planning departments are underresourced. If local authorities were given incentives rather than penalties, that would be a much more positive way forward.

**Scott Barrie:** What might those incentives be?

**Councillor Dunn:** Perhaps a council that submits its plan on time should win two planners.

**Councillor MacDonald:** The incentive should be extra resources.

**Scott Barrie:** It seems a bit strange to me that resources should be the only incentive.

**Councillor MacDonald:** A reception at Holyrood, perhaps, could be offered to those authorities that submit their plans on time. The incentives could be a bit more imaginative. However, the principle is that, rather than hit people over the head with a big stick—that is often the impression of what central Government does to local government—the Executive should work with and encourage councils.

**Councillor Dunn:** We need a golden carrot.

**Scott Barrie:** On the issue of democratic accountability, why does COSLA state that it cannot accept the final authority of the reporter on development plans?

**Councillor Dunn:** The provisions on the role of the reporter are probably the only ones with which we have a real problem. As I explained, West Lothian Council has been through a process of engaging with the public similar to that which is encompassed in the bill. At all stages of the planning process for the local plan and the structure plan, we have had community meetings and workshops, reports to and from the council and developer presentations and representations. We have had all that consultation just to produce our local plan, which is about to go to a public inquiry.

After the public inquiry and all that engagement with the public, it is proposed that the reporter will be able—as has happened—to produce a report that is completely contrary to the views that people have expressed throughout the process. If the reporter's say is to be final, why bother with all that consultation and with going through the process of trying to engage the public? We might as well give the whole thing to the reporter in the first instance if the reporter is to have the final say and is not to be accountable to anyone.

Instead, local authorities should be expected to take on board the reporter's recommendation but should be able to depart from it with good reason. The proposal that the reporter should have the final say undermines the gist of the provisions on public engagement. We will end up with the decision being made by one person who has not attended any public meetings and who has not considered the issues over many years. There are good reporters and bad reporters just as there are good councillors and bad councillors, but that is the way of the world. To give the final say to the reporter undermines the engagement with the public that we are all trying to achieve within the planning system.

**Councillor Phillips:** I will supplement what Councillor Dunn said. We had a local plan inquiry that centred on a multimillion-pound development. If the reporter's decisions had been final, neither the council nor the objectors would have been satisfied. The reporter's proposals would have made inoperable a development that could create about 3,000 jobs, and £500 million of investment would not have happened. That is important.

We are not saying that the reporter is always wrong and that we are always right. However, on balance, local authorities must have the opportunity to act as local authorities. If that power is taken out of our hands, the system will appear to the public and us to be a dictatorship of one.

**Councillor MacDonald:** A reporter is not democratically accountable. He is not elected.

**Councillor Dunn:** The reporter's views are important. We are not saying that we should undertake a public inquiry and then ignore the reporter's views. However, a balance must be achieved. Our big issue is with the finality of the decision.

**Councillor Davies:** I have been vociferous in public about the matter, as members know. At the most recent meeting of the City of Edinburgh Council's planning committee, we had a deputation from Ratho community council, whose members felt that the reporter on the rural west Edinburgh plan had bounced them away.

All the authorities in the Lothians agreed the land allocation for new housing that needed to be made in the structure plan. We made that provision in our draft of the rural west Edinburgh plan and everybody in the locality was consulted on that proposal. At the public inquiry, a developer persuaded the reporter not to go for site A in one village but to go for site B in another village. That suddenly popped up in the reporter's report.

The planning committee disagreed with most of the reporter's suggestions, but we thought, "We can't say no to all of them—we must say yes to one or two." Because the arguments between the two sites were, roughly, balanced—it was just a matter of judgment—we went with the reporter on the Ratho recommendation. Of course, local people were furious, because they had never been consulted on the proposal, which just turned up at the last moment. If we had not been under pressure to obey the reporter, we might have made a different decision.

It is right that reporters should be able to overrule councils in the national interest. That is fine if a council does not match up with the national planning framework, the strategic development plan or another major national policy, or if a council is playing around because land that it owns is involved. However, when a question is on the balance of judgment between two sides, I see no reason for a reporter to intervene. If mistakes are to be made—they will be—it is much better that they are made by an elected local authority than by an unaccountable reporter. I feel terribly strongly about that. The bill's provisions are utterly wrong and need to be changed. That is the one aspect of the bill about which all local authorities are concerned and quite emotional.

**Scott Barrie:** Those comments are useful, because we will return to the matter at stage 2. It would be useful to find out how we should change the bill, because different local authorities seemed to have slightly different views. I gathered that much clearer partnership between a local authority and a reporter is needed and that the reporter should not be the final arbiter and sole decision maker.

10:45

**Councillor Davies:** Having a big public hearing is absolutely right but, at the moment and under the bill, only the objectors can come and the people who might support a proposal do not get a voice. That is wrong, as there needs to be a balance of views. The local authority is elected and can be kicked out. We have a vested interest in being re-elected—we are not going to be too stupid about these things where local interest is concerned. If mistakes are made, they need to be with us and not with somebody who moves on and does something else.

**Scott Barrie:** Another concern in your written submission is about the power of the Scottish ministers to direct the transfer of local authority staff to work on the strategic development plans. Can you expand briefly on that?

**Councillor Dunn:** Trevor Davies feels passionately about that as well. It has been described as a what-if power. We have had discussions on the matter and we are a bit more reassured than we were, but the wording of the bill is still as it is. The power seems to be a last resort. If that is the case, that is fine, as of course there needs to be a last resort. Nevertheless, Trevor Davies takes issue with some of the wording of the bill where it does not sound as if the power is just a last resort.

**Councillor Davies:** The bill enables ministers to intervene willy-nilly. It allows ministers to intervene in the way in which we employ people and to name a person who is employed by a local authority to do a specific job. It enables ministers to agree a scheme of delegation before the council even looks at it. Some of the powers in the bill appear quite wrong because they are day-to-day powers for everybody.

Ministers need powers to intervene when a local authority is substantially failing in its duty—none of us has a problem with that. In fact, that power is enshrined in the Local Government (Scotland) Act 2003. We all agree with the way in which the powers in that act are formulated. It involves proper performance assessment, best value and all those things that we all sign up to. The powers for ministers to intervene when things go wrong are clearly set out in the 2003 act. Ministers should rely on those powers and not introduce new ones in the bill that would enable them to do everything that we do as a matter of course.

**Scott Barrie:** I think that we will return to that next week when we have the minister before us.

**John Home Robertson (East Lothian) (Lab):** Before we leave the theme of development planning, I draw attention to an area that is particularly relevant to the authorities that are represented here today—the provision of affordable rented housing to meet urgent local social needs, which we all know about in different parts of Scotland. It has been put to us that that can be well-nigh impossible where all or most of the suitable land is directly or indirectly owned or controlled by developers who probably have an interest in maximising their return on the value of that land. Local authorities can write plans until they are blue in the face, but the developers will sit on the land until they get the maximum value for it. Do you acknowledge that that is a problem and can you suggest any ways in which we or the bill might enable the release of land for affordable rented housing?

**Councillor Dunn:** That is an issue. We have not had a problem with land in our area, but we have an affordable housing policy, as part of our local plan, that states that 15 per cent of all development should be affordable housing. That can be in-kind payments—cash, basically—to build the affordable housing elsewhere, or the

developer can choose to build houses for rent or shared ownership, or whatever. That policy is sustainable today, but we will tell you in 12 months' time if the developers try to take us on on it.

In the talks that we have had with developers on the policy, we have been up front with them all the way along the line about the fact that 15 per cent of all development should be affordable housing. They have, at this stage, come on board with the policy. We have had some planning applications recently in which the policy has been tested and the developers have contributed the 15 per cent in cash. We have not stipulated that it should be land that is made available, though. Land might be an issue in other areas, but in our area the issue is getting that 15 per cent. We then use the money to work collectively, or we can work with the developer to deliver the affordable housing on its development site, which gives it quite a good social mix on a big site. Generally, though, we have received cash. I do not know whether any developer in other areas has come forward with the keys to affordable houses.

**Richard Hartland:** That will happen. Development of that nature needs a large enough site that the affordable housing can be integrated as opposed to being in little pockets. The little-pockets approach is rather dangerous in an attempt comprehensively to develop or redevelop an area.

**Councillor Dunn:** When we started to draw up our development plan, we visited a new settlement in Camborne, in England, which includes affordable housing. In that development it was not possible to say, "Here are the big houses; the poor people's housing is over there," because the policy had been to build the affordable houses among the other houses on the estate. People who walk round the estate are not aware of the housing tenure.

It is important that affordable housing is not poor quality or stuck in a corner, miles from places of employment. The policy should be used to encourage the building of affordable housing on sites in better-off areas on which other housing is being built.

**Councillor Phillips:** Before I set off to this meeting, East Renfrewshire Council's planning director acquainted me with the council's supplementary planning policy guidance on affordable housing—I have it with me. Willie Dunn mentioned a quota of 15 per cent for social housing, but East Renfrewshire Council's guidance mentions a quota of 25 per cent, which is a tall order given that the council's area includes some of the most affluent parts of Scotland. Affordable housing might be a bit of a pipe dream in Newton Mearns. However, we are addressing the matter.

We recently attempted to secure affordable housing on a brownfield site in one of the council's poorer areas, but the developer came back to us with starting prices of £105,000 per unit. That is a clear indication that there is no meeting of minds on what is meant by affordable housing. A unit that costs £105,000 is certainly not affordable housing.

**Councillor Dunn:** Another issue for us—I am sure the same issue arises in Eddie Phillips's area—is how susceptible the affordable housing policy is to challenge. In my council's area, there are developments of more than 3,000 houses and we are using section 75 agreements to ensure that developers do not just contribute to schools but build schools and roads. In addition, we ask for 15 per cent social housing. I think that developers will take us on and say, "Wait a minute here. We will build schools because kids will come to live in the new development that we're building, but the council had X number of people on its waiting list before we built these houses." Developers might try to challenge councils in an attempt to get out of having to meet the 15 per cent quota—or 25 per cent quota in East Renfrewshire. There will be interesting cases in future. However, I think that our policy is sufficiently robust and justified by housing needs in our area. The policy seems to be working, but the applications for the big developments have not come in—we are talking serious money in that regard.

**Councillor MacDonald:** Most of East Dunbartonshire is owned by housing developers, funnily enough. We are trying to protect our green belt by releasing for housing no more sites than we absolutely have to release. Our policy is that the proportion of a new development that is to be social housing should be 20 per cent in areas that already have high levels of social rented housing and 40 per cent in other areas. The policy seems to be working. As happens in West Lothian, developers quite often give money to the council to provide social housing. There is a proposal in the local and structure plans for 3,000 new houses in the next 10 or so years. Developers obviously do not want to build social housing on their sites; they prefer to give us money, which we must spend in a certain time. There will be a difficulty if the council runs out of its own land. If that happens, where will we build the affordable properties?

**John Home Robertson:** That is the question that I am asking.

**Councillor MacDonald:** I admit that that is a difficulty. We will simply have to tell developers that they must build social housing on the site that they own, as the policy says, and see what

happens. Up to now, the indication is that developers accept that situation.

**Councillor Davies:** Just to put a slightly different gloss on the question, we have been terribly careful to ensure that we do not build large areas of social and affordable housing like Wester Hailes and Pilton ever again. I see Edinburgh's 25 per cent policy as being almost equivalent to the developer providing 25 per cent of its land to us so that we can get a social landlord to come and run the houses. It is land and build, but it is almost the equivalent of land. There will be occasions on which we make a deal to build off-site, but that does not happen often.

**John Home Robertson:** I do not think that I am going to get an answer to that question. We acknowledge that there is a problem, but there is not much in the way of solutions other than aspirations.

Maybe there will be unanimity in response to my next question, which is about key agencies. We heard from Councillor Dunn about difficulties with Transport Scotland, and others will no doubt talk about Scottish Water. What about the proposal to place a duty on key agencies to engage in plan delivery? Will that be sufficient to ensure that plan objectives are delivered?

**Councillor Dunn:** Here's hoping. This is a problem. Local authorities are having nightmares at the moment because of Scottish Water. It is Scottish Water that is delivering our development plans at the moment, because there are large areas of Scotland where local authorities cannot do development because of Scottish Water, whether it is in the development plan or not. It is incumbent on Scottish Water to work more closely with us and with the Executive on those issues.

We all seem to pick on Scottish Water—it is a good example—but there are also problems in other areas. In my area, there are issues to do with Scottish Power and the upgrading of cabling to allow development to go ahead. I talked earlier about other people getting their heads in the game. It is important that there is strong encouragement for the key agencies to engage in the process. You asked whether, if we fail to deliver, we should be penalised in some way. My view is that those agencies, if they fail to deliver in a reasonable timescale, should be penalised equally. If it is good enough for us, it is good enough for them.

**Patrick Harvie:** Your written submission states that you have concerns about the definition of sustainable development not being clear enough. What would you regard as a clear and workable definition?

**Councillor Davies:** I do not think that that definition should be in the bill. Our understandings will move and change over time, so the definition should be expressed in policy rather than legislation. For instance, each turn of the national planning framework might build on what sustainable development means and how we implement it.

**Patrick Harvie:** So you do not think that there should be a definition in the bill.

**Councillor Davies:** No.

**Patrick Harvie:** Are you comfortable with the duty being in the bill?

**Councillor Davies:** Yes, because our knowledge changes; I have noticed that it does so faster than legislation does.

**Patrick Harvie:** I am not sure that I would disagree with that. You say that you are comfortable with the duty on local authorities with respect to the development plan and that you would be happy to see that extended to cover the NPF in terms of ministerial duties.

**Councillor Davies:** I think that it does not make sense if it is a duty only on local authorities and not on national Government.

**Patrick Harvie:** Does that also apply to local authorities' general approach to development management? I accept that you could not impose that duty on every development individually, but a general approach to development management could be taken in accordance with the same principle.

**Councillor Davies:** The general approach to development management will be a policy written in the development plan, so it will be there or in supplementary guidance. The City of Edinburgh Council has just published draft standards for sustainable building, which will be supplementary guidance as part of our development plan and which will inform our development management decisions.

11:00

**Patrick Harvie:** It sounds as if you are saying that pretty much every part of the planning system should work in accordance with sustainable development, so I am puzzled by your rejection of the idea that that should be a statutory purpose in the bill.

**Councillor Davies:** I understand that there is a statutory purpose in the bill in relation to development plans. If the system is plan led, development plans will govern our development management decisions on individual applications. They cannot do otherwise.

**Patrick Harvie:** COSLA's submission states:

"While COSLA acknowledges that the definition could be clearer, the need for a statutory purpose is not accepted".

**Councillor Davies:** That is right. I used to think that including a statutory purpose for planning in legislation was a good idea, but now I do not think that it is, because our understandings change over time. However, there should be a duty. Sustainable development can be a strong part of policy statements or whatever.

**Patrick Harvie:** I would like to try something out on you. Section 1 of Sweden's planning and building act states:

"The provisions aim, with due regard to the individual's right to freedom, at promoting societal progress towards equal and good living conditions and a good and lasting sustainable environment for the benefit of the people of today's society as well as of future generations."

Do you want to respond to that? How does that grab you?

**Councillor Davies:** It is the next step, when we all need to engage in the policy-making process, that makes life difficult. I am not sure that having such a statement would be relevant; what is relevant is how that is unpacked in national and local policy making. I hope that how we do that and our understanding of how to do it will improve over time. However, I think that your objectives are the same as mine.

**Patrick Harvie:** That is probably true, but would it not be helpful to make clear what planning is for rather than allow there to be a perception that planning is for helping businesses to make money?

**Councillor Davies:** That is said with regard to development plans for local authorities. If it is also said with respect to the national planning framework—which I think needs to be done—I would be content, but I am not sure that it is useful for the Parliament to spend a lot of time debating such definitions. I would prefer people to get on with things.

**Richard Hartland:** It is more important to have a societal understanding of what sustainable development is and for society to buy into sustainable development than to have a statutory definition of it. If a policy or an allocation of land is included in a local plan, the public will expect that policy to be implemented or that allocation to be made, but that will not necessarily happen unless other pieces are in place. Things are much the same with sustainable development. As a practising professional planner, I am worried that by defining something in an act, particularly when, as Trevor Davies said, our understandings and technology are changing almost by the day, developers will have something to hang a hat on and to debate and argue about with people. Someone could say, "You can't ask for that because it's been defined otherwise in the act," but the act, which will dictate what we do, will be out of date. I am talking about a flaw that I have come across too often.

**Councillor Dunn:** It is important to stress that we have the same aim: we all want to achieve sustainability. The issue is what the best tool is to achieve it. Richard Hartland said that we could prevent ourselves from reaching that nirvana by having a piece of legislation that developers will use against us, rather than legislation that we will use for the greater good.

**Scott Barrie:** What are COSLA's views on the proposed three-tier hierarchy of development? Should it be applied uniformly throughout Scotland or is there room for local variation?

**Councillor Davies:** There must be local variation. We deal with 100 houses daily in Edinburgh but, in a rural area, that would be an extremely major development. I welcome that hierarchy and think that it is quite right to treat various scales of things differently. I worry slightly about how we will get to the definitions. I worry about what will be defined as a national development. Would Edinburgh's waterfront be a national development? Clearly, it is a national asset. However, I would have a problem if it were so defined. The way in which those definitions are made will be a matter for careful consideration.

**Councillor Dunn:** I worry about the local aspect. As Trevor Davies said, in Orkney, 100 houses would be a major development but 100 houses in Leith would not be a major development for the City of Edinburgh Council. There must be flexibility.

We have a lot of interest in the definition of a development that would be a national priority. Trevor Davies is correct to point out that a national priority can be a local priority. However, it can also be a local nightmare.

**Scott Barrie:** Do you have any concerns that there is a possibility that the supplementary planning guidance that is issued by a planning authority might contradict any national planning guidance or development plans?

**Richard Hartland:** It would be deeply flawed if it did. That is why it is essential that national policy be a result of consultation as opposed to diktat. That will enable local authorities to understand the policy and ensure that the Executive understands and takes into account the local conditions. That is happening more and more frequently and to better effect.

**Councillor Davies:** However, those problems do not mean that ministers need to take the power to vet and agree to every piece of supplementary

planning guidance that every local authority issues.

**Councillor Phillips:** I concur with those points. The question of supplementary planning guidance can be particular to a particular local authority area. There is not necessarily a role for the Executive in that. The Executive should see what councils are producing—some best-practice gains could arise from that—but, generally speaking, that would seem to be an unnecessary imposition on councils and the Executive on something that councils are perfectly able to do as professionally as they do most things.

**The Convener:** I am conscious that we have been questioning you for quite some time and you are probably in need of a short break. I therefore suspend the committee.

11:08

*Meeting suspended.*

11:17

*On resuming—*

**The Convener:** I call Christine Grahame to begin questioning.

**Christine Grahame:** Oh! Sorry—I am eating some shortbread. Excuse me a minute.

**Councillor Davies:** If I can respond to that question—

**Christine Grahame:** You needed your sugar fix, too. I heard you.

You said a lot about the importance of early consultation, and I think that we all agree with you. A gentleman who gave evidence last week called it participation, and I was rather attracted to that. People tend to think that they are getting things stuffed in front of them and that it is more of a sham or a presentational thing than reality. Should planning authorities, rather than just developers and communities, have a formal role in pre-application consultation?

**Councillor Dunn:** Trevor Davies will have a view on that and I have my own view on it. I do not know whether they are the same as COSLA's.

**Councillor Davies:** I agree with what you say about participation—that is interesting.

There are two issues, the first of which is the making of planning briefs, master plans and so on. We are just about to start that for a development in north Portobello. It is important that the local community is there with everybody else with a blank sheet of paper. Such participation is really important, and it is important that it takes place during the development planning bit of the process, when discussing supplementary guidance, development and all the rest of it. When it comes to community consultation on applications, it will be more of a consultation. The developer will usually work up something and say, "Here are some ideas," although the better developers will consult earlier than that.

Local authorities need to have a role in that—others may disagree—even if that role is just to say what kind of procedure we expect people to go through when there is a development of such-and-such a scale in a local authority area. Local authorities could ensure that some sort of procedure is put in place and that local people and developers know that it has to be followed. When a developer makes an application, they would need to report to us on what they had done.

**Christine Grahame:** So you are saying that it is about process.

**Councillor Davies:** Yes, and that what comes out of the process is between the developer and the community.

**Councillor Dunn:** I have two views on the subject. I will tell the committee both of them. Before I finish, I will make up my mind which one I will support.

**Christine Grahame:** You are just trying to make yourself intriguing.

**Councillor Dunn:** I am just trying to figure out what I am thinking.

I agree with Trevor Davies that councils have a role to play. We should go further than that: we should attend meetings and facilitate things. If the council is not involved, there is a danger that a developer will give a community council or community group information that is incorrect or that does not stand up in planning terms. The council has a role to ensure that the information that is disseminated to the public is correct.

My only concern is that, if a council facilitates a meeting, the public might perceive that it supports the developer, and that it therefore supports the development. I have been at consultations on developments where a local member chaired the meeting. That is the danger in local authorities becoming involved in such events. On balance, however, it is probably best that they are involved. If councils decide to become involved, they need to ensure that they do not take a view on the proposal, and that the public are given proper information on what is acceptable in development terms and on the role of the public in objecting to or supporting an application.

**Christine Grahame:** However, nothing in the bill says that. Are you saying that local authority attendance should be mandatory or discretionary?

**Councillor Dunn:** If pushed, I would go for discretionary. Local authorities should be able to choose the form of consultation or pre-application consultation in which they want to be involved and choose whether they set the parameters or run the show.

**Christine Grahame:** Do we require to amend section 10, by adding something along the lines of, "The local authority may, if it regards it appropriate in the circumstances, be party to a consultation"? Should such wording be added to the principal act?

**Councillor Dunn:** Yes.

**Richard Hartland:** A couple of fundamental points are involved. Councils should recognise that we might have to engage with the developer and the community if a development is of community significance. As Willie Dunn said, we should be able to use our discretion on that. On too many occasions, I have come across cases where a community council, residents association or some other recognised group becomes involved, or wants to become involved, in a development that is not necessarily of community interest; it is more of a polarised or local-interest issue.

In a fit of pique, when the council was not asked to a meeting between a developer and a community, I said that the developer was, of course, there to sell his product. Developers employ experts to do that, and my worry is that the community does not receive a balanced view of proposals. In many instances, the promise of a certain facility can be dressed up as planning gain, to lubricate a development that might be contrary to the development plan. That information has to be put up front. For that reason, councils have a responsibility to present proposals.

**Christine Grahame:** So you would attend, but without taking a view. You would be there in a factual capacity to provide information to the public.

**Richard Hartland:** Yes.

**Christine Grahame:** Moving on, let us say that a council does not go along to the consultation between a developer and the community. The developer then submits its report on the consultation process. How would the council decide whether the consultation was done properly? How would you assess its value?

**Councillor Davies:** If the process was not done properly, we would be yelled at by the local community. It would tell us.

**Christine Grahame:** But what would happen if you found that the developer had done something along the lines that Richard Hartland described? I know that that is a leading question, but things can be slipped in.

**Councillor Dunn:** If a developer told the community that it would provide a new community centre if the development went ahead, and if that promise was in the information that we receive, when the application came before the planning committee we would aim to create a formal section 75 agreement with the developer to deliver it. The developer would lodge a report from the community meeting, but I am sure that on the back of that meeting the community council or individuals would make their views known to the planning department. You are correct that council involvement would make the process stronger and ensure that it is fair.

**Councillor Phillips:** It is incumbent on councils to ensure that developers' histories are taken into account. A developer in our area promised to introduce community facilities and factory units but, when we examined the developer's history, we found that all it had done was build houses. People in the community needed to know about that so, obviously, we let them know.

**Christine Grahame:** I stand to be corrected, but the bill does not state that pre-application consultation reports must be published. It states simply:

"A pre-application consultation report is to be in such form as may be prescribed."

I hope that the reports will be published so that the community can see them.

**Councillor Dunn:** I assume that information on the consultation will be part of the documentation that goes to the planning committee, and that it will therefore be in the public domain as part of the committee report, in the supplementary information on the public consultation. For example, the minutes of meetings will be included. Objectors' letters and other documents are put before our planning committee. The committee papers are sent out a week before the meeting and they are available on the web and at various council buildings. I assume that that is how the information will be published.

**Christine Grahame:** I will move on from the up-front participation or consultation to pre-determination hearings. What are your views on them? I may be misquoting the developers from whom we took evidence, but I recall them saying that they have to submit much more detailed applications for pre-determination hearings than they do otherwise. Is that the case?

**Councillor Dunn:** I would not say so.

**Christine Grahame:** I have obviously misunderstood. What are your views on pre-determination hearings?

**Councillor Davies:** The City of Edinburgh Council uses them and I think that West Lothian Council and others do, too. We have been surprised, because we use them less often than we thought we would when we set up the procedure. I am not sure why. It may be because we resolve matters at an earlier stage.

**Christine Grahame:** Do you mean at the consultation stage?

**Councillor Davies:** Yes. When objections come in, we try to resolve them as part of the process. We have fewer pre-determination hearings than we thought we would, but we do not have a grip on why. Good early consultation probably reduces the need for pre-determination hearings, but when they are needed—because issues have not been resolved—I imagine that the community is better informed and better able to make a presentation to the hearing than it might have been otherwise.

**Christine Grahame:** Do you envisage a role for formal independent mediation to resolve differences when conflicts arise? We have examined that route a little.

**Councillor Davies:** No, because we are there to do that. We have been elected by the people to make decisions on their behalf. We have their interests at heart and it is our job to make the decisions—that is what we get paid miserably for.

**Christine Grahame:** But you are going to get golden carrots.

**Councillor Dunn:** We will have to melt them down to live off them.

**Christine Grahame:** Seriously, do you see any role for mediation between all parties? For example, what if a community was at loggerheads with its council about a certain development?

**Councillor Dunn:** The ultimate decision is for the council.

**Christine Grahame:** Mediation is not about decisions; it is about resolving disputes. My point is that mediation might be preferable to imposing a decision on people. Do you see no role for it at all?

11:30

**Councillor Davies:** It is an interesting question. We have held community workshops when we have been developing master plans and planning briefs. The various interests came to those workshops, so mediation was almost taking place there. Such events are about developing new understandings and coming to a view. We did that successfully in relation to the big Fountainbridge developments. Of course, the developer tries to scoot by that, so we have to hold firm, on behalf of the community, to what has been agreed.

**Councillor Dunn:** In the early stages, there is mediation by design. The developer wants their development to go ahead. If the community does not want any development to go ahead, mediation will not change their minds.

**Christine Grahame:** I understand that.

**Councillor Dunn:** If there is middle ground, we tend to find that things change through early discussions—the building becomes pink rather than blue, or whatever. That is the natural form that mediation takes. If there is an impasse, there will be entrenched positions and, usually, the community will be opposed to any development. The matter is then in the hands of the planning committee.

**Councillor Davies:** As I mentioned, we are just about to start the process in relation to a development in Portobello. If committee members want to sit in on that process for information, I am sure that we can organise it.

**Christine Grahame:** That is on the record; it will be a matter for the convener and the committee to consider. Thank you.

**The Convener:** Members might want to take up the offer, depending on their diary commitments. If the City of Edinburgh Council is happy to make that formal invitation, I am sure that we will give it positive consideration.

**Councillor Davies:** Having made the offer, I will—

**The Convener:** You may need to follow it up.

**Christine Grahame:** We expect tea and buns, of course.

My final question is on processing agreements, which are mentioned in the white paper "Modernising the Planning System" but not in the bill. Would they help you to work with developers? Incentives were talked about. Would processing agreements help by giving people markers as to where they should be at certain times?

**Councillor Davies:** Are they not in the bill?

**Christine Grahame:** I do not think so. I checked with our team.

**Councillor Davies:** I had the impression that they were in the bill. We are working with the Scottish Executive on some processing agreements.

**Christine Grahame:** I am advised by the clerks that they are not in the bill.

**Councillor Davies:** Their omission might disappoint some of us.

**Richard Hartland:** Perhaps processing agreements will come through in secondary legislation.

**Christine Grahame:** Should they be in primary legislation? I will leave you to discuss the matter with your legal teams. It seems to me that the enabling power should be in the bill and the detail on the structure of processing agreements should be in subordinate legislation.

**Richard Hartland:** I think that there is probably a presumption that, to make the system workable, processing agreements will have to be voluntary. I would find it difficult to develop a processing agreement if it might never be adhered to. The system needs to be thought through carefully on that basis.

Earlier, we reflected on the role of key agencies and consultees. We can agree a timetable and a processing agreement for an application, but it might be held up by another agency—I will not knock Scottish Water again, but there are others, such as Historic Scotland and Scottish Natural Heritage.

**Christine Grahame:** I am sure that your lawyers could include caveats.

**Richard Hartland:** Yes, but we should not make the process a legal one. We should reach an understanding and develop a processing agreement by a voluntary process. It should not be something that we demand.

The secret is in the definition of unreasonable conduct. If a local authority could be held to account for not delivering a planning permission within the agreed timetable when the delay occurred because a consultee had not been able to give the authority their comments, the system would be flawed. If the authority was found guilty of unreasonable conduct in trying to deliver that processing agreement, it would have to pay back half the fee.

**Christine Grahame:** What is the point of processing agreements if they are not enforceable by the developer—or, indeed, by the planning authority if the developer fails to comply with the timetable? I do not see the point in having an agreement if it cannot be enforced, subject to caveats, of course. Whether it is a voluntary agreement or a contractual bilateral agreement, what is its relevance if it cannot be enforced?

**Richard Hartland:** The exercise could be assumed to be gimmicky, but its purpose is to allow a developer to pay more money to receive a better service. To pay more money is to resource and, therefore, deliver the service. If we have processing agreements in some instances but not in others, the situation might be difficult, because we might not be able to budget for taking on resources. For example, we do not employ a planner to deal with just one planning application; we need a planner in a team to deal with a raft of planning applications. The decisions are budgetary and managerial.

**Christine Grahame:** I am trying to understand you. Are you turning away from processing agreements?

**Richard Hartland:** No. I am just trying to examine and exhaust the difficulties that they may create.

**Christine Grahame:** Councillor Davies is giving me a funny look but he is not saying anything.

**Councillor Davies:** Authorities already use such agreements, but we cannot extract extra money from them. Agreements need to be contractual. I wonder whether processing agreements are in the bill; I thought that they were, because we are all trying to get on with them. Perhaps such a provision is not in the bill because agreements need to be voluntary. It may be an issue of best practice, culture, skills and education.

**Christine Grahame:** I understand. We will leave that for you and perhaps us to ponder. I am now pondering.

**The Convener:** If COSLA would like to give the committee supplementary evidence on that issue, you should feel free to send it to us. We would consider that with all the other written evidence.

You suggested in your submission that most local authorities are willing to take on responsibility for neighbour notifications, but that several believe that that will be a significant burden. How many local authorities have reservations? What problems might arise from the new obligation?

**Councillor Dunn:** I honestly do not remember the number of authorities that were concerned. Gordon MacDonald's council was not one of them; his council supported the proposal. The authorities were not against undertaking neighbour notifications, but they had concerns about how it would affect them. The issue is geographical. In my opinion, neighbour notifications by properly resourced local authorities should be provided in recorded delivery letters through the postal service, as happens with objections to licences for licensing committees. Recorded delivery provides proof of delivery and proof that a document has been served.

Some authorities' view was that a planning officer would have to go round to hand out the neighbour notification and ask someone to sign a document. In Edinburgh, a planning application could relate to land next to a block of flats in which 100 people lived. In a more rural area, one neighbour notification of somebody who lived 20

miles away might be involved. There is not confusion, but a difference of opinion among authorities. We all agree that if the system is properly resourced, a local authority could and should take on the responsibility.

How we deliver neighbour notifications is a resource issue. As I said, my view is that the costs include the cost of staff to administer the system. If notification were to be mailed by recorded delivery, which provides proof of delivery, that would make for a sustainable argument and would provide a council with a way to prove that it had served the notices. If an individual officer has to go round, the system will be extremely costly and will involve many issues in rural and urban areas. Some people are a bit anxious that a council could be seen not to be doing its duty if it failed to serve a notice. At the moment, it is easy to blame someone else.

We should undertake neighbour notifications and that work should be properly resourced so that we can do it in a way that is robust—I use that word again—and defensible. A council must be able to prove that it served the neighbour notifications by showing the signed recorded delivery document or proof that a person refused to sign. The difference of opinion among local authorities relates to that. Some people will not touch the proposal because they think that it will be another burden that is not resourced. That is the reason for some authorities' response.

**The Convener:** Is it the general view of COSLA that the obligation should be an administrative task that will lie within the planning authority but should not necessarily be the responsibility of a planner? Will that give communities confidence? One of the problems that I pick up as a constituency MSP—as do my council colleagues—is that people often say, "I didn't get my neighbour notification". If local authorities are responsible for issuing notifications, I hope that there will be much greater confidence that the people who should be contacted will be contacted.

Should the fees for planning applications reflect the additional financial burden that local authorities will have as a result of taking on the obligation?

**Councillor Dunn:** Yes, yes and yes are the simple answers. I think that local authorities having responsibility for that task will give people more confidence. At the moment, a lot of people think that councils should be carrying it out or are failing to do so. There will always be people who claim that they did not get the letter, even when they signed for it and are presented with their signature to show that. That is the nature of the planning beast. If the council is responsible, the public will have more confidence. The obligation should be an administrative task, not a planner's task, and it should be resourced within the planning application fee system.

**Councillor Davies:** I will add some complexity to Councillor Dunn's very simple answer. It is probably right that the resource will come through the planning fee. However, the costs involved in a development in my ward that might affect 300 people would be different from the costs involved in a development in Orkney that might affect two people and three sheep. How are the planning fees to vary to reflect such circumstances?

The fees that we receive are a rare example of fees that are fixed, to the penny, by the Parliament. In other areas of local authority life, such as licensing, fees are fixed by the local authority working within statute, which provides that we are allowed to charge only fees that are sufficient to cover our costs. It would be better if local authorities could fix planning fees according to their local circumstances, within broad statutory guidance; that would parallel the approach that applies to other local authority fee charging. We should adopt that approach, rather than leaving it to Parliament, which has many other things to do. The fees that Parliament sets usually come too late and do not keep up with costs.

**The Convener:** We will have the opportunity to raise that matter with the minister when she comes before us.

**Councillor Dunn:** I agree with what Trevor Davies said, but the other approach would be to have the cost of postage calculated by the department or developer according to the number of neighbourhood notifications that they had to issue. At the moment, developers have to figure out how many neighbourhood notifications they will have to issue. That could form part of the application; developers would be charged appropriately for the amount of postage that was needed.

The administration fee—the fee for the paperwork and the staff member's time—could be built into the charging. Whether 300 people or two people were affected would be reflected in the number of neighbourhood notifications that the applicant would have to issue.

**Councillor MacDonald:** We estimate that we will require an additional two admin staff in East Dunbartonshire Council.

**Councillor Dunn:** Richard Hartland has just whispered in my ear that advertising is costly for local authorities and needs to be considered in determining fees.

**Mary Scanlon:** A major cause of distrust is renotification when there is a variation in the planning application that was agreed by the community. I understand that the detail of that will

be set out in secondary legislation. The policy memorandum states:

"Responsible planning authorities already make arrangements for re-notification."

I have no doubt that it is referring to West Lothian Council. How do you view that? What would you see as a variation in a planning application? What would constitute a significant or substantial variation? I hope that you agree that the current approach has led to mistrust in communities.

**Councillor Dunn:** I was talking to Richard Hartland about that just a few moments ago. He said that the situation is a bit of a nightmare at the moment. The bill seeks to clarify the position. I ask Richard Hartland to answer the question, because it relates to something that he deals with day in, day out.

11:45

**Richard Hartland:** I agree that such variations are one of our more difficult tasks at present. Again, the issue involves levels of complexity. If, after receiving objections to a planning application, we negotiate a significant or material change with the developer, the modified proposal should be the subject of a new application. However, I do not want to require a willing and co-operative developer to submit a new application on which we would need to start again if we have already achieved what we set out to do. Instead, we can notify the objectors or the neighbours—probably both—to advise them that the plans have been amended.

However, renotification is a time-consuming business given the difficult public information issues that are involved. It is easy for local authorities to stand by the letter of the law, as I pointed out earlier, by saying that the renotification mechanism is not required because the changes, although an improvement, are not felt to be material. It is easy to duck behind such an explanation when the fact of the matter is that the council did not notify people simply because it failed to do so. We need a better understanding of those issues. Again, that must be part of the culture change. We need to ask, "Who are we serving? Who are we trying to encourage to participate?"

One of the secrets to dealing with such issues is the development of electronic service delivery whereby people can log on easily. My experience so far is that, where that is made available, people use it.

**Mary Scanlon:** I want to push you slightly further by asking you to give us an idea of what you would consider to be a substantial change. Committee members have asked whether a proposed 25-unit housing development would be considered to have undergone a substantial change if, after going through the process and being subject to negotiations, it gained an extra storey and became a 40-unit development. I appreciate that there will be differences between Orkney and Edinburgh on such matters, but based on your experience can you give us an example of a substantial change that would be worth renotification?

**Richard Hartland:** An example would be applications for which additional plans need to be submitted. At present, if an outline planning application is submitted but we require more details on the development to inform and instruct our decision on planning permission, we are not obliged to advise people that further plans will be required. I believe that that should be necessary and we have now changed our procedures on that. However, I appreciate that that does not answer the question directly.

The issue comes down to a feel for the situation. A professional judgment has to be made on whether the change will improve the development and whether it will mean that those who made representations will be reconciled with the development. The change might improve the development such that it has a lesser impact on the original objector but a more significant impact on another party. That involves a judgment. However, speeding up the process is fundamental.

The issue also comes down to development management. It would be easy to provide that any developer who, for example, adds another storey to a house has made a significant change that must be the subject of a new application. However, the change in the design might result in a better end-product. Whether a new application is required or whether the objectors and third parties can be pacified by renotification is a matter of judgment. There is a sort of three-level approach.

**Mary Scanlon:** Secondary legislation will define the circumstances and the period within which variations will be permissible. We will have an opportunity to discuss that later, but I have one question. Should we welcome the fact that application variations are to be put on a statutory footing?

**Richard Hartland:** Is that question for me?

**Mary Scanlon:** I do not mind who answers. Most of the other details are for secondary legislation.

**Richard Hartland:** I think that that is welcome. The result should be that we have better guidelines and a better feel for the process and procedure.

**Christine Grahame:** You gave the example of a variation to satisfy objectors, but variations can be

made for other reasons. If the developer and the planners agree that the variation is not substantial but the community council is unhappy with that, should the community council have a community right of appeal so that the question whether the variation is substantial can be determined independently?

**Richard Hartland:** Ultimately, I would put that to my committee to assess the degree of substantiveness or otherwise. That would be the proper framework in which to do that.

**Councillor Davies:** There is variation that takes place before an application is determined and variation that takes place after it. Those are two very different things. When variation takes place before an application is determined, it is often part of the negotiation process and usually it is an improvement. The example that Mary Scanlon gave of an extra storey being added and a 25-unit development becoming a 40-unit development during the negotiation process is incomprehensible to me. That would be shocking; in those circumstances, I would want a new application and all the rest of it. I would have a firm word with my head of planning.

Variations that happen after an application has been determined are much more problematic. How do we judge what is minor, what is an improvement and what might be detrimental and, therefore, ought to be looked at through some kind of process? That is a tough one.

**Christine Grahame:** That is why I asked about it. If a community does not agree with the planning authority or the developers that a variation is not substantial, they might have a right to challenge the decision and seek a determination on whether the variation is substantial.

**Councillor Davies**: In those circumstances, like Mr Hartland, I would expect my head of planning to bring that to committee.

**Councillor Dunn:** People have a right to write to the council and say that they believe that we made the wrong decision. The report would come to the planning committee, which, under delegated authority, may or may not have seen the previous application. That committee would decide whether the officer's judgment was correct.

**Christine Grahame:** Surely if the challenge was to go before a planning committee it should not go before the same people who agreed to the variation in the first place.

**Councillor Dunn:** They would not have agreed to the variation; they would have approved the original planning application. The variation would have been done by the officer.

**Christine Grahame:** So, it would go back to them. That is fine.

**Councillor Dunn:** If the original application was approved under delegated authority and no objections or minimal objections had been made, the planning authority would not have agreed to the application in the first place.

**The Convener:** That takes us on nicely to our next questions.

**Mary Scanlon:** Yes; they are on schemes of delegation. First, though, I have a quick question on the issue that Christine Grahame raised. I trust that, in considering the second application, you would take into account the community's point of view and the potential objections to the first application.

**Councillor Davies:** Yes. That would be the only reason for the matter coming to the committee.

**Mary Scanlon:** I just wanted to get that clear on the record. Thank you.

Will the establishment of the formal schemes of delegation make the planning system more efficient?

**Councillor Dunn:** From West Lothian Council's point of view, we are saying, "What's kept you?" We are currently working under the scheme of delegation. At first there was some cynicism among elected members, who felt that in some way the scheme of delegation was handing all the power to the officers, but the scheme that we have in West Lothian Council has worked fairly well and the officers deal with the applications as they come in. If there are five individual objections to any proposal or an objection from a community council or an elected member, the application goes to the planning committee. A few applications that would have been covered by the scheme of delegation have come up to the planning committee. In some cases the committee has gone against the recommendation of the officers and in some cases it has not.

By and large, the scheme has worked well and I am not aware that we have had any complaints from members of the public. People have not been rushing to our surgeries to say that the scheme is wrong and undemocratic; they seem to be fairly comfortable with the scheme, as the relationship between the planner and the applicant is built up there. In addition, the planning committee has fewer applications to deal with and more time to spend on the applications that come before it. If, under the scheme of delegation, an application is recommended and comes to the planning committee, people can come up and put their case to the committee either for or against a particular development. Our decision is then based on that.

The system in West Lothian seems to be quite robust and to work fairly well. A degree of trust is built up between elected members and officers. In

general, the role of the officers has not been called into question and, by and large, the officers make the right decision at the right time. We still feel engaged in the process and the community still feels engaged because people get notification of the development. Community councils are happy with the system, because they know that they need to write only one letter in order for there to be a public hearing on an application.

I do not know whether Richard Hartland wants to say more about what we do under the scheme of delegation.

**Mary Scanlon:** I appreciate the perfection of West Lothian. However, your submission mentions the "sensitivity among planning conveners" about the

"changing relationship between elected members and officers in the management of planning applications."

Would Richard Hartland and other members of the panel like to address that point?

**Councillor Dunn:** I do not chair the planning committee. West Lothian Council has an enterprise and development committee and there is a separate committee dedicated to planning. If I have been bad, I have to go along to substitute on the planning committee every now and again.

The chair of the planning committee has an excellent working relationship with Richard Hartland. The chair of the planning committee is one of the people who was quite in favour of the system. I was going to speak off the record, but we are obviously on the record. He is one of the last people whom you would think would want to give power to an officer, but he has been very comfortable with the system because he is part of the process, it makes his committee run better and it allows more time to be spent on important issues. Obviously every decision is important to the individuals concerned, but the system enables more time to be spent on scrutiny of the really important cases.

**Mary Scanlon:** I accept that, but your submission mentions the planning conveners' sensitivity. I ask some of the other panel members what was meant by that comment.

**Councillor Phillips:** I am chair of East Renfrewshire Council's planning committee, so the buck stops with me. We have a scheme of delegation. I admit that I was cautious about the scheme to start with, but it is apparently working very satisfactorily. Every councillor who receives the weekly list of applications can call in or put on the agenda any application—not just an application in their own ward, but any application in any ward. I admit that that right is used sparingly. We do not end up with 60 or 70 applications being considered. We consider the most important applications, in relation to which there are local concerns, which can be properly aired.

To hark back to the question of appeals or hearings, I would say that we have moved away from a system in which there were an awful lot of apparently frivolous hearings. My colleagues will be sick and tired of hearing me use this example, but one full committee hearing involved one millionaire and his lawyer arguing with another millionaire and his lawyer over a tree house. It is vital that important issues are addressed. Consider the officer time that was spent on the issue and the time that was spent by both individuals, who had to pay their briefs. In our view, such a practice was unsustainable. It brought ridicule on the council and the whole planning system.

We have moved to a system that operates very satisfactorily, in which I as the chair of the planning committee and the head of planning can decide on whether hearings take place, depending on the significance of the issue. Significance is the important word. Previously, we would have had perhaps 12 or 13 hearings at a sitting; now, we have an occasional hearing on an important issue, for which the public are well represented. I think that the system works. I would commend our approach in East Renfrewshire.

12:00

**Councillor MacDonald:** In East Dunbartonshire, we also have a scheme of delegation. Our system is different from the system in West Lothian. There must be some local flexibility with regard to the number of objectors that triggers a matter going before the board. On the question of relations with officers, I have not picked up any tension being caused by the scheme of delegation. If an elected member asks for a matter to come before the board, the officers bring it before the board.

**Councillor Davies:** We have just amended our scheme of delegation to delegate a little bit more. While we were doing that, we did some benchmarking with our peer authorities and discovered that about 85 to 90 per cent of planning applications are determined by delegation in authorities such as ours. I do not know what the figure is like in other authorities, but that is our level.

Paragraph 147 of the policy memorandum says:

"Planning authorities will be required to submit proposed schemes of delegation to the Scottish Ministers before the Council agrees the scheme."

That concerns me. I do not know what on earth a scheme of delegation between my committee and my officers has to do with the Scottish ministers,

as long as we are delivering an efficient system as determined by regular audit. I find it quite extraordinary that the Executive can vet a scheme before a council even looks at it.

**Mary Scanlon:** Should there be a consistent scheme of delegation throughout Scotland?

**Councillor Davies:** Absolutely not. The scheme depends on the relationship between the elected committee and the staff. People who do not delegate will fail all the best-value audits that you might put upon us, and there are mechanisms in the Local Government in Scotland Act 2003 to deal with that. That is how the mechanism should work; ministers should not be vetting and approving every scheme of delegation before the council even looks at it.

**Mary Scanlon:** I think that we will accept that you are not as sensitive as I thought you were, based on your submission.

**Councillor Davies:** We are sensitive about ministers intervening.

**Mary Scanlon:** Okay. I would not have wanted you to miss the opportunity to put that on the record.

Previous witnesses have raised concerns about an appeal in a delegated case being made to the same legal body that made the initial decision. How could those concerns be addressed?

**Councillor Dunn:** If the application is being dealt with under the scheme of delegation, the planning committee, or whichever committee deals with planning applications, will not have heard the initial application, which will have been dealt with solely by the officers. We are indeed part of the same authority but, as I have said, not every decision by or recommendation from planning officers is adhered to by planning committees. Planning committees judge all cases on their merits, either for or against. Confidence in the system should lie in the fact that the public make their appeals to the democratically elected members for the area, who have not been part of the planning process for a particular application, and who will judge the matter afresh, based on the information that is in front of them, just as they might judge any other application the first time round.

**John Home Robertson:** I return to the theme of ministerial powers, which I know that you are all interested in. With respect to appeals, section 18 is quite difficult to read, because it is made up of a series of amendments to the principal act. Our understanding is that it gives powers to Scottish ministers to decide on the most appropriate method of deciding appeals. You do not mention that in your written submission. Would you like to take this opportunity to comment?

**Councillor Dunn:** Well, Trevor? I should explain that Trevor Davies has majored on the subject of the Scottish Executive and appeals.

**John Home Robertson:** Has he?

**Councillor Davies:** The power of appeal was slipped into the Town and Country Planning (Scotland) Act 1947 by Labour ministers at the last moment.

**John Home Robertson:** I am not that old.

**Councillor Davies:** That was done in order to get the bill through the House of Lords. Perhaps it was not necessarily a prime concern. I would like to do without appeals altogether, unless there has been some obvious misbehaviour on the part of the council. That is a personal view, however, and that wish is unlikely to be achieved.

**Christine Grahame:** But you have got it off your chest.

**Councillor Davies:** I have got it off my chest.

I am not sure whether it is in the bill—it was certainly in consultations and the white paper—that there would be a vetting procedure with any appeals that were made. If the council made a decision that was within the agreed development plan, the appeal would pretty much be dismissed as a matter of course. That is absolutely right. Making a decision outside the development plan would be done only with considerable judgment and discussion, and if only such decisions were to end up at appeal that would be a bit better.

There are circumstances, such as the building of a new supermarket, in which I think it is right that there should be a much bigger public debate. That would be just fine.

**John Home Robertson:** I am talking not about whether there should be an appeals process, but about how such a process will be dealt with. We understand that the effect of the bill will be to leave it to the discretion of Scottish ministers to decide how to dispose of such appeals. This is your chance to say what you think of that.

**Councillor Davies:** I would need to refer to the bill.

**John Home Robertson:** Even if you were to do that, I suspect that you would be in trouble because of the way in which the bill is written, but that is another story.

**Councillor Davies:** Yes, but the intention was that ministers would not uphold an appeal on a decision that had been made within the development plan. I think that that is right. Perhaps it will be introduced through the secondary legislation. It would also be right if any appeal were to be almost a review of the planning committee's judgment rather than a chance to

introduce new elements to the application. Appeals sometimes mean that someone almost has a chance to make a new application, which is grossly unfair. I am glad that limitations on the appeal process are being introduced.

**Euan Robson:** What are your views on the proposals to reduce the duration of a planning consent from five years to three years?

**Councillor Dunn:** COSLA welcomes that reduction; five years is possibly too long. All local authorities have dealt with cases—there is one in my area—in which someone sticks down a brick the day before the five years are up. Five years is too long; three years is sufficient time for an individual developer or a company to get their act together, within reason, to get a development moving. Leaving it longer than that could leave local authorities open to ridicule, especially if a plan has been passed and the building has been sitting there for five years without being developed.

**Euan Robson:** You talked about a meaningful process, which is not just about putting a brick on another brick. Should a threshold be identified?

**Councillor Dunn:** We have not discussed that collectively. Personally, I think that there should be a threshold. The thing about putting a brick upon a brick is a bit of a joke, but there was a fairly derelict house just down from my street, and a week before the five years were up, some meaningful development was started. We are now seven years on and the windows have just gone in. I think that the guy works on the building in his summer holidays every year; it is an old family home that he inherited. Since the planning process started, something like 14 years have passed and the house is not ready to be occupied. When the guy has finished, he will make a hell of a profit because of the rise in the property market since he started.

Development should be meaningful. It should consist of more than just a skip and a couple of people in hard hats.

**The Convener:** Communities often find the possibility of enforcement a comfort and of some reassurance. Do you think that the bill will give local authorities the teeth that they need to ensure that developers comply with any conditions attached to planning consent?

**Councillor Dunn:** The bill will improve the situation. Richard Hartland would tell us that sometimes he needs a couple of machine guns and to be able to move very quickly to get developers to do what they should be doing. That is the important part; it is not about our asking developers for something extra, it is about getting them to do what they have agreed to do.

I can give an example from West Lothian Council—I picked up an e-mail about the case during the break in the meeting. The planning permission for a development to extract shale in the Pumpherston area included a wheel wash, but the roads in the area have been littered with shale for the past two years. I have repeatedly gone back to the planners and they have gone to the developers—they tried to be nice at first and encouraged them to use the wheel wash so that matters would not have to be taken to the next stage. However, even if the wheel wash was used for a while the problem would reappear, particularly during the winter. We are about to serve the people with a notice, which might take four to six weeks to do. In the meantime we are trying to talk to them.

The system should be more robust and enable us to move more quickly, because the people who have to live with such developments have to cope with the problems that arise, whether they are to do with the extraction of shale or lorries that trundle up and down carrying materials for a housing development. The public who live in the area should be protected by the local authority. We also need to work more quickly and be more focused. If we have sufficient powers we will be able to encourage developers to comply with the conditions that they agreed to.

**The Convener:** I assume that councils welcome the proposed additional powers, but is there also a resource implication for local authorities? Some members of the committee might have taken a little tour in the vicinity of the site that you mentioned.

**Councillor Dunn:** Have they? It is terrible, is it not?

**The Convener:** We appreciate your concerns about that. Is there an issue about how local authorities will resource enforcement, to avoid a situation in which there is enforcement only in theory and not in practice?

**Councillor Dunn:** There is an issue about resource and our ability to carry out the threats that we will be able to make under the proposed new powers. However, developers know that local authorities mean business in relation to our existing powers. We will probably use the resource less but we will be able to use it more quickly.

Developers in many areas are at it—for want of a better phrase. They know that they can get away with not complying for a certain time before the council gets round to enforcement. We need staff on the ground who can serve notices and take action. We also need staff behind the scenes, in legal services, for example. However, I am glad to say that the stop notice will go up in relation to the Pumpherston issue and the streets will be clean.

**John Home Robertson:** That is because the committee went there.

**The Convener:** It had nothing to do with the local councillor.

**Councillor Dunn:** I was thinking that that might be the case. There is another local issue that the committee might like to come along and sort out for me.

**The Convener:** It is common practice for the councillor to do the work and the MSP to take the credit.

**Councillor Dunn:** No change there, then.

**Councillor Davies:** We have noticed that.

The stop notice provision in the bill will be helpful to us. The current process is so long that people can go well down the road before such action is taken. As Councillor Dunn said, the serial offenders take us all for a ride and are the real problem. We need the power to fine such people. I would not want to fine everyone, because people often act out of ignorance and it would not be right to fine people in those circumstances. However, we need extra leverage so that we can lean on serial offenders who do something wrong two, three or four times. One mechanism that people use is the retrospective planning application. The fees for such applications should be significantly higher than the fees for a proper application and there should be fixed penalty notices and fines in serial enforcement cases.

**Councillor MacDonald:** I echo that. Our arsenal should include the ability to fine people who do not comply with planning permission or who knock down a house in a conservation area without permission to do so—that happened in my council's area. However, fines must reflect not just what happened but who did it. A £40 fine is a joke to a large property developer, so there must be proportionality.

**The Convener:** I was going to ask about fixed penalty notices, but the witnesses have explained why such notices would be useful in certain circumstances.

**Councillor Davies:** I am not sure whether the bill mentions them, but the white paper certainly refers to completion notices, which would also be useful tools in the enforcement armoury.

**The Convener:** They are in the bill.

**Councillor Davies:** At the moment, things do not need to be completed, which means that conditions cannot be imposed. Completion notices allow one to enforce the conditions.

12:15

**Christine Grahame:** Do you publish the names of developers who breach their conditions? Such naming and shaming might well hit big companies and even local builders.

**Councillor Dunn:** We do not do that, although I would love to be able to. I think that there might be a legal issue in that respect. I know from a trip to Wisconsin that, each week, local papers name and shame people who are done for speeding. Such a measure could be useful in shaming big companies into observing conditions. However, if companies are aware that the local authorities have such tools, they will not make mistakes in the first place.

**Christine Grahame:** Would those tools—which, of course, would have to be subject to approval—include naming and shaming? Obviously, you do not want to be done for defamation.

**Councillor Dunn:** It would be a useful tool to have in the toolbox.

**Councillor Davies:** We do what you suggest by taking enforcement through committee. All that information is then in the public realm.

**Councillor MacDonald:** Sometimes we refer matters to the procurator fiscal, although they are rarely taken any further. Of course, if they were taken further, people would be named and shamed.

**Councillor Davies:** That is an important point. The fiscal is reluctant to get involved in any planning enforcement issues. Occasionally, it would be helpful if the fiscal would take notice of and deal with some high-profile matters.

**Councillor MacDonald:** If the fiscals are not willing to take forward such cases, the alternative is to introduce some form of land court.

**The Convener:** It is a question of evidence. I have certainly pursued that matter with the Crown Office because, in my constituency, the situation in Greengairs—which is almost as famous as Pumpherston—has raised questions of proper enforcement and whether the law has been broken. Recently, the Crown Office has sought to ensure that every fiscal's office has a properly trained fiscal who specialises in planning legislation. Such a step should ensure that, if that final legal course of action needs to be taken, there will be much more enforcement.

**Councillor Davies:** I have to say that, around the country, the fiscals' approach lacks consistency.

**The Convener:** What is COSLA's view on the bill's proposal to replace section 75 agreements with a new system of planning obligations?

**Richard Hartland:** I believe that some members share my concern about the proposed right of appeal against a council that declines to waive or amend a section 75 agreement or planning obligation. That approach might be flawed. After all, as the name suggests, a section 75 agreement is just that—an agreement. It is entered into voluntarily and for very good reason; indeed, without such an agreement, the application for the development might well have been refused. If the provision is not examined further, it might well weaken the purpose of section 75 agreements or planning obligations.

**Councillor Davies:** With the caveat that Richard Hartland highlighted, the City of Edinburgh Council is generally content with the bill's proposals. However, many of us are deeply unhappy and worried about the Treasury's proposal for a planning gain supplement, which would certainly undermine this element of the bill.

**The Convener:** Mary Scanlon has a specific question about the planning gain supplement.

**Mary Scanlon:** I realise that we are talking about Westminster legislation. However, this bill seeks to make significant changes to section 75 of the Town and Country Planning (Scotland) Act 1997 at the same time that parallel legislation at Westminster will ride a coach and horses through the same section.

I understand that a measure similar to the planning gain supplement was introduced in the 1970s, but was abolished because it was unworkable. I wonder whether any of our witnesses—perhaps those of a more advanced age or with more experience—are able to comment on what happened at that time.

**Councillor Dunn:** I am a bit young, but I am aware that there have been two or three attempts to introduce something similar over the past 40 years. From West Lothian Council's point of view, the planning gain supplement—the system that is proposed in the Westminster bill—would be a complete and utter nightmare. If it were introduced, we would be left with a £150 million gap in our delivery of schools, road infrastructure and park-and-ride facilities, all of which we are getting as a result of section 75 agreements with developers.

**Councillor Davies:** It would be disastrous for affordable housing policy.

**Councillor Dunn:** The proposed system would kill the whole process of what we have been trying to achieve in West Lothian over the past few years. COSLA has tried to get more information on how it would work, but it is what could be called suitably vague. It would leave us with a huge problem. At the moment, if we pass a planning application for X amount of houses, we will draw up a section 75 agreement for the delivery of a school or something similar. We pass the planning application, subject to the conclusion of the section 75 agreement. That is fine. We know what is coming.

As far as I can ascertain, under the proposed system the developer would pay a tax to the Treasury. We would be faced with a planning application that may require X amount to be spent on schools. To get that money, we would have to make a bid to the central fund. We would not know whether we would get the money, so we could not pass the application. That would slow down the whole planning process and go against what we are trying to do. Moreover, what would happen if we did not get the money from the Treasury? How would we fund those projects? Would we be left with 4,000 houses and no money to build any infrastructure for them?

From a UK point of view, I can understand what the proposed system would be trying to achieve, but the Scottish situation is different. We can live with section 75 agreements; they are not perfect, but they work. What is planned will confuse the situation and slow it down. If the aim is to take money out of development sites to reinvest in infrastructure, I do not think that the proposed system will achieve it—and it is already happening. Let us consider the uplift that a farmer gets when a piece of land that is worth £3, £4 or £5 an acre is designated for housing under the local plan and is suddenly worth £400,000 an acre. That uplift is being taxed through a section 75 agreement because the agreement says to the developer, "For this to become housing land, you have to give us X, Y and Z, which costs this amount." The developer passes that cost on to the farmer, who ends up getting less money. With section 75 agreements, the tax is already there and the money is going directly into the areas that are being affected by the development; if it did not, the council would be acting illegally. We cannot say to a developer, "We want you to contribute £0.5 million for a park-and-ride station 45 miles away," because that would not pertain to their development. At the moment, the system that we have under section 75 works fairly well in achieving taxation on the uplift in the value of the land. More important, an agreement is focused on the area that is affected by the development and on the benefits that that development can bring to a community.

**Mary Scanlon:** Would I be right in saying that planning gain supplements would seriously reduce your negotiating hand?

**Councillor Dunn:** We will not have one.

**Mary Scanlon:** Am I also right in saying that, although the money would go to the Treasury, there would be no guarantee how much will come

back to Scotland or that the money will come back to the authority from which it was raised?

**Councillor Dunn:** Definitely. To be cynical for a moment, we could have a housing development in West Lothian that gets wapped for X million pounds' worth of tax. The Treasury takes its cut and the money goes back to the Scottish Executive, which decides to spend a percentage of it on delivering the third line of a tram system that does not even go into West Lothian.

**Councillor Davies:** Suddenly I am converted to the idea.

**Councillor Dunn:** I am sure that those decisions are taken for the greater good of the Scottish economy, but meanwhile, in West Lothian, we have got 4,000 kids without a school. They can get on the tram if they come into Edinburgh, but they cannot go to school, they cannot go along the streets and they cannot go to a community centre. Planning gain has to be focused on where the development is happening.

**Mary Scanlon:** Councils are concerned. I think that we have all received a communication from Falkirk Council, and I have no doubt that others will follow.

**Councillor MacDonald:** The local connection is crucial. Although the proposal is that the money might come back to the region, there is no definition of what the region is. Is Scotland a region? Is the west of Scotland a region? Is Glasgow a region? Or is East Dunbartonshire a region?

More or less all the economic development in East Dunbartonshire—and we have a £56 million initiative to regenerate Kirkintilloch—is a result of planning gain from developing the old Woodilee hospital site. If money went into the Treasury, it would be extremely unlikely that East Dunbartonshire could have that sort of development.

**Councillor Phillips:** In my view, the centralisation—in a Scottish context—of this particular issue would be an unmitigated disaster. That view is backed up by what people here have said so far.

I am reminded of a regeneration programme in my council area. That programme will fail if section 75 is not in place. Every councillor in Scotland, if asked the same question, would come up with exactly the same answer—we do not want this.

**Mary Scanlon:** I am grateful for your views, which are very much in line with my own concerns.

I know that the planning gain supplement was tried on several occasions and was abolished because it was unworkable. Do any of you have experience of it?

**Councillor Davies:** I am old enough, but I cannot remember. However, I knew that the issue would come up, so I have brought along the City of Edinburgh Council's submission to the Treasury, which reiterates points that we have made. I would be happy to leave it with the committee.

**Mary Scanlon:** Thank you—that would be helpful.

**Councillor Dunn:** Richard Hartland assures me that he was a young planner at the time.

**Richard Hartland:** I can assure you that I was a very young planner at the time. One reason that the planning gain supplement was not enacted fully was that very few people understood it—certainly this young planner struggled with it. I am therefore very wary of the idea.

Local authorities have also expressed concerns that a significant amount of land in some areas of Scotland is owned by well-established and very old estates, which may well choose to hold on to their land until such time as a new regime repealed the legislation, allowing them to operate under rules that would be more familiar and probably more lucrative to them.

**Mary Scanlon:** When the Tories win the next election.

**Councillor Dunn:** It is a hell of a long way away, that one.

**The Convener:** I do not think that we should stray on to that subject.

**Patrick Harvie:** I have a quick question on planning obligations. I have been trying to get my head around the idea of unilateral obligations, and no one has given me a good reason for them. It seems to me that developers would be unsure of the value of an obligation undertaken unilaterally; that communities would feel that developers had more freedom to set their own terms than they should have; and that local authorities might feel that their discretion to set conditions or to decline an application would be limited if developers were able to determine which obligations they undertook. Have you any views?

**Councillor Dunn:** From the way you put your question, I think that we agree.

**Councillor Davies:** That sounds like a question for Richard.

**Richard Hartland:** I share Mr Harvie's concerns exactly. There is much to be applauded in the Planning etc (Scotland) Bill, but we must fall back on the old adage—if it isn't broken, don't fix it. The section 75 arrangement is fairly sound, has been well tested, and has proved robust. However, we have a responsibility to consider whether we can make the arrangement work more quickly and

more efficiently, so that we can deliver projects without the seemingly inevitable legal delays. In various parts of the country, including West Lothian, we are dedicating resources towards that end and are making progress.

12:30

**The Convener:** My final question is on good neighbour agreements. Does COSLA have a view on whether the bill should introduce the possibility, where appropriate, of good neighbour agreements?

**Councillor Dunn:** I agree that they should be included. Good neighbour agreements are important. The convener has an example of one in her area and there are other examples throughout the country. I think that the agreements would give comfort to people who live with developments about what was going to happen and when it would or would not happen.

**The Convener:** In my view, it must be clear what a good neighbour agreement is; it is not an alternative to a planning condition. Is there a possible role for local authorities in the enforcement of good neighbour agreements? Or would that be a step too far for local authorities? Should good neighbour agreements be restricted to agreements between communities and developers?

**Councillor Dunn:** Good neighbour agreements should not be confused with planning conditions, but they are a nice add-on, from a developer's point of view, to reassure people that the developer will do what it says it will do. On the enforcement aspect—what is an agreement? Let us be brutally honest. How many developers do we know who will come along and say, "Yeah, sure we'll do this. Yeah, we'll sign up to that," but will not actually do it? It is all about the enforcement aspect of the agreement. If there was a properly resourced enforcement role, local authorities could take that on. Again, though, it comes back to resources and what we could and could not do.

A good neighbour agreement is a good idea that works well when both parties work to the agreement. However, we must consider what happens when an agreement goes wrong. What can we do and what do we do? I would not want local authorities to have no powers, because without them a good neighbour agreement is just a nice piece of paper. A good neighbour agreement should include an enforcement regime. If it was properly resourced, local authorities would be the ideal bodies to do the enforcing.

**The Convener:** Thank you. That concludes the committee's questioning and I thank the witnesses for their attendance. I particularly thank Councillor Dunn, who managed to mention West Lothian almost as many times as I mention in this place my surrounding villages—and that takes some doing.

I briefly suspend the meeting to allow our witnesses to leave.

12:32

*Meeting suspended.*

12:34

*On resuming—*

# Petition

## GSM-R Communication Masts (Planning Permission) (PE811)

**The Convener:** We move on to the final agenda item, which is petition PE811, from Parents and Residents against Masts. The petition calls on the Scottish Parliament to consider and debate the permitted development rights that Network Rail enjoys in respect of the erection of 96ft-tall global system for mobile communications railway—GSM-R—masts in residential areas. The issue of permitted development rights is not being examined in the context of the committee's current consideration of the Planning etc (Scotland) Bill. However, the clerks suggest that there might be an opportunity to raise the issue with the minister at one of the two evidence-taking sessions that will take place next week. That would allow us to consider the issues that the petition raises. Do members have any comments on that proposal?

**Christine Grahame:** The briefing paper on the petition says that there is a current review of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992—the GDPO. Can you give me an idea of the timescale for that?

**The Convener:** We do not know, but we can establish that and get back to you.

**Christine Grahame:** I think that it would also be useful for the petitioners to know that.

**Scott Barrie:** The letter from Malcolm Chisholm to Michael McMahon of 8 November 2005, which we have a copy of, says in the third paragraph:

"As part of the process of modernising planning we are reviewing the permitted development rights contained in the GPDO as a whole, a possibility I mentioned in my letter of 11 April."

That is the point that we need to raise with the minister next week, given that his letter stated that that was what was going on in November.

**The Convener:** We could also ask about the timetable at that point.

**Patrick Harvie:** If we and the Executive are serious about the issues behind the Planning etc (Scotland) Bill, which is about people having a right to get involved as early as possible in how decisions are made, it would be consistent to ensure that we address the issue the petition raises, not on the basis of whether people want a mast near their home, but on the basis that they should have a part in the decision-making process. That is not to say that permitted development rights are a bad thing in principle in all cases, but clearly people's strong feelings need to be addressed. It would be a positive move to have a future evidence session about the Executive working group's review of permitted development rights, albeit that it might take place after consideration of the bill is finished.

**The Convener:** That concludes our comments. Are we agreed that we will conclude our specific consideration of the petition, but pursue the issues that it raises with the minister?

**Members** *indicated agreement*.

*Meeting closed at 12:37.*

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