COMMUNITIES COMMITTEE

Tuesday 28 March 2006

Session 2

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COMMUNITIES COMMITTEE
10th 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 GAVE EVIDENCE:

Tim Barraclough (Scottish Executive Development Department)
Johann Lamont (Deputy Minister for Communities)
Jim Mackinnon (Scottish Executive Development Department)
Michaela Sullivan (Scottish Executive Development Department)
Lynda Towers (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 1

Scottish Parliament

Communities Committee

Tuesday 28 March 2006

[THE CONVENER *opened the meeting at 09:32*]

Planning etc (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): I open the 10th meeting of the Communities Committee in 2006. I remind all those present that mobile phones should be turned off. Apologies have been received from Tricia Marwick, who is unable to attend the meeting.

The only item on the agenda is the Planning etc (Scotland) Bill, for which I welcome the Deputy Minister for Communities, Johann Lamont. She is accompanied by Jim Mackinnon, chief planner; Michaela Sullivan, assistant chief planner; Tim Barraclough, head of planning policy and case work; and Lynda Towers, deputy solicitor in the office of the solicitor to the Scottish Executive.

The importance of the bill, and the number of individual proposals within it, have been stressed on several occasions. I hope that the minister will appreciate that the committee has a considerable number of questions to ask, both today and tomorrow, and I thank her in advance for her patience in answering those questions. Minister, I understand that you want to make a short statement prior to our beginning our questioning.

The Deputy Minister for Communities (Johann Lamont): I appreciate the fact that I am noted for my patience, and it is good to have it acknowledged this morning.

I am pleased to address the committee on the Planning etc (Scotland) Bill, which represents the most significant reform of the planning system in Scotland in a generation. The bill takes forward proposals that were set out last June in the white paper, "Modernising the Planning System". The bill is the central element of our programme to achieve our vision of a successful planning system—a system that is forward looking and that rebuilds the trust that communities must have in the system.

Our reforms will establish a system in which new development is led by up-to-date, relevant and proactive plans; in which all interests are fully involved in the decisions that affect them; and which will unlock Scotland's potential and deliver the growth that Scotland needs—growth that is sustainable in social, economic and environmental terms. The bill will make the planning system fit for purpose. It introduces a clear sense of priority and will allow different types of application to be addressed in different ways. That is why the bill will give the national planning framework an enhanced role and status. The NPF will set out the Executive's strategic development priorities more precisely and will bring together the spatial implications or area impacts of the on-going programmes of the Executive, other public agencies and local authorities.

The NPF will have a key role in providing the national context for development plans and planning decisions. Many people have, rightly, said that the planning system is too unwieldy, complex and poorly focused. I agree. That is why we aim to create a planning hierarchy to streamline and speed up the planning process across the board and to focus engagement and scrutiny on the major, complex and controversial development management issues. That will make the new system better for everyone.

Our white paper, "Modernising the Planning System", placed great emphasis on early engagement in the planning system. The bill will increase communities' ability to engage early in the process. It will guarantee their right to make their voices heard while proposals are still on the drawing board. Most important will be a deeper and closer engagement at the development planning stage, when strategies are agreed and the principle of development on particular sites is set.

I want planning to play a central role in the delivery of sustainable development and environmental justice. As revitalised development plans will be at the heart of the modernised planning system, the bill requires those plans to be prepared with full regard to the principles of sustainable development. Like the white paper, the bill covers a large range of issues. It is the core component of a comprehensive and finely balanced package of reforms that are designed to revitalise the Scottish planning system.

I know that the committee has already heard a great deal of evidence from a wide range of interests and that committee members will have many questions to ask. I hope that my answers will help to explain why I have made these important proposals. They are significant modernisation proposals because they are the key to unlocking Scotland's future. This is a once-in-a-lifetime opportunity that we must take together.

The Convener: I will start the questioning. When do you expect every local authority in Scotland to have an up-to-date development plan?

Johann Lamont: Different local authorities are at different stages. We are not starting at a base

from which we could reasonably expect all plans to be rolled out by a certain date. The process will be important for local authorities as they develop their plans, and they will not all do that at the same pace. Perhaps Jim Mackinnon can outline the timetable for some of the proposals that will be made in secondary legislation.

Jim Mackinnon (Scottish Executive Development Department): As the minister said, planning authorities are at different stages of plan preparation. Some are close to adopting local plans and some have structure plans either that are with us at the moment or that will be submitted to us shortly. Those should provide a long-term perspective on Scotland's future.

We do not have a blank sheet of paper and we do not want to stop progress on development planning. Different councils and planning authorities will arrive at up-to-date local plans at different stages; there is no doubt about that. Some will, I guess, have up-to-date local plans by the time that the bill is passed. We want local authorities to maintain the momentum, as the very clear signal from the white paper is that development plans will be at the heart of the reformed system. However, we will produce draft regulations, which we will consult on next year, once the bill has been passed. After we have consulted on them, we will lay revised regulations.

It is not a case of saying that we will have up-to-date development plans by a certain date. The authorities are progressing development plans at the moment, and we do not want the reforms to act as a deterrent to or constraint on that.

The Convener: The committee shares your concern that the bill should not act as a deterrent to the production of development plans, which are needed. If we do not have development plans, it will be difficult for people to know what the shape of their community will be. However, our experience in Scotland is not uniform, and several local authorities' development plans are considerably out of date. What reassurance can you give the committee that the development plans will all be up to date? At the moment, in some local authorities, they are 10, 20 or even 30 years out of date.

Johann Lamont: The bill draws a line in the sand and makes it clear that the new system will be a development plan-led system. That marks out to local authorities why it is important for their plans to be kept up to date. Equally, we will have to ensure that local people understand that their engagement at the development plan stage is critical. That is why the development plan process will involve neighbour notification about specific proposals in the plan, rather than leaving that until an application for planning permission is made.

So there is a job to done to alert people to the implications of development plans. Local authorities throughout Scotland are expected to be consistent in taking their development plans seriously. If a development plan is out of date, it will not be as significant in the consideration of a planning application as it would be if it were up to date. It is in the interests of the local authority to ensure that it keeps its development plan up to date.

We are pushing with the grain of local authorities. I was struck by how positive the Convention of Scottish Local Authorities was about the bill, which will not be resisted, although there are practical concerns about its delivery. Local authorities understand the importance of development plans. Ultimately, of course, it is possible for the Executive to intervene to seek a planning audit to see what is happening in an individual local authority. We will not say that we want a development plan-led system, but fail to follow through with the consequences of that. We will both support and press local authorities to ensure that they do all that they can to ensure that development plans are kept up to date.

The Convener: What action does the Scottish Executive envisage taking if development plans in a particular local authority are not kept up to date and do not comply with the five-year timescale?

Johann Lamont: It is helpful to work on the assumption that local authorities want to co-operate with the new process. They have been extremely positive and there is recognition that having an up-to-date development plan that local communities have bought into is a strength, because it helps local authorities to manage their business. There does not necessarily have to be conflict. However, as I said, the development plan is critical. If there is a pattern in a local authority of its development plan not being up to date, being out of kilter with everybody else and all the support mechanisms and training have not effected a change, ultimately the Scottish Executive can ask for a planning audit from which there will be recommendations that can be pursued.

The key message is that we want to work with local authorities to deliver development plans because we and they understand how critical they are in managing their local authority business and change in their communities.

The Convener: My final question is about the ability of the Executive and the Scottish Executive inquiry reporters unit to consider development and strategic plans. Are you aware of the concerns of local government about the pressures that might arise, particularly in the reporters unit, as a number of local authorities finalise their development and strategic plans? How will bottlenecks be dealt with?

Johann Lamont: We want to work closely with local authorities to manage this business. There is no point in having a development plan system that falters because we do not have the means by which to work through the process to approve the plans. We need to work with the reporters unit and local authorities to identify what causes those bottlenecks, how the process can be managed and the problems addressed. Perhaps Jim Mackinnon can highlight some practical measures.

Jim Mackinnon: A key point to remember is that, for the first time, we are proposing a statutory requirement to keep development plans up to date. I am afraid that that has only been honoured in the breach so far. It has been a good idea and good practice, but we are now proposing that plans should be updated every five years. That requires a culture change in the management of the process, not just to make it a technical or bureaucratic process, but to ensure that communities are involved throughout the process and have trust and confidence in what is happening.

It is important that, in the audits that we carry out, there will be several reasons why a local authority has or has not performed as we envisaged. It might be because the plan is before the courts as a result of a legal challenge, it might be that the local authority has not devoted sufficient resources to it or it might be because the volume of objections to a particular local plan was higher than anticipated. How we address particular issues will be a case of horses for courses.

In relation to the role of the reporters unit, we are asking local authorities to prepare a development plan scheme that indicates how they will cover their area in the plan and when they will do that. That means that there should be more advanced knowledge of when pressures will arise. That is an important change. As a result of changes to appeal mechanisms, we propose that small appeals—which, taken together, can take up a lot of reporter time—will be passed to a panel on the local authority. That should release capacity in the inquiry reporters unit.

However, just as there is a management job for local authorities, there is a management job for the Executive and the inquiry reporters unit, so that demands on the system can be anticipated and planned for.

09:45

Scott Barrie (Dunfermline West) (Lab): We heard evidence from the Convention of Scottish Local Authorities last week. The witnesses argued that giving a reporter the final authority on development plans failed to acknowledge local democratic accountability for decision making. How do you respond to that contention? Why have you given the reporter the final authority?

Johann Lamont: We acknowledge the critical role of local authorities in delivering development plans and bringing about change in local communities, and we acknowledge that local authorities are democratically accountable. COSLA probably highlighted that in its evidence. However, there is a tension. On balance, we judged that we wanted a broader—from the stakeholders' point of view—fairer and more independent process. That is especially the case if a local authority has interests in sites covered by the development plan. Two themes that have run through our discussions on the bill have been democratic accountability and local authority interest. We are trying to strike a balance and we acknowledge the importance of independent scrutiny.

We will allow planning authorities to depart from development plans, but only when the circumstances are clear. We have to reassure communities that, although local authorities may have certain interests in the development plan, their plans will be tested.

COSLA has raised concerns about the removal of local authority discretion. We are considering the wording of the bill to see whether we can ease those concerns—which we acknowledge—but we see both sides of the issue.

Scott Barrie: It would be helpful if the wording were reconsidered. Communities need to know what they can expect from a development plan. At the moment, there are gaps that have to be filled. COSLA argued strongly that, if the final authority rests with a reporter, the work that local authorities are trying to do for their communities could be undone. The idea of there being a partnership must be strengthened; it should not be a case of one or the other partner being paramount.

Johann Lamont: We want to resist centralisation; the charge of centralisation concerns me greatly. However, communities have to be confident that what local authorities do is open to scrutiny. We are happy to consider the wording in the bill to see how COSLA's concerns can be addressed, but people want local authorities' plans to be open to independent scrutiny too.

Jim Mackinnon: In England, the recommendations of the inspector—as the reporter is called—are binding on local authorities. We do not think that that is appropriate for Scotland and we want to acknowledge local authorities' crucial role. However, people sometimes write to us to say that, although their case was considered at an inquiry and the reporter accepted their arguments, they now feel

disillusioned and disenchanted with the planning process because the reporter's recommendations were overturned. We want to put checks and balances into the system. People's arguments have to be heard, and local authorities rightly have a role in the process. As the minister said, we will consider the wording to see whether we can ease COSLA's concerns.

Scott Barrie: Thank you for that.

Minister, you mentioned the charge of centralisation. Why does the bill give Scottish ministers a power to direct the transfer of local authority staff to work on strategic development plans? That is another issue that COSLA raised last week.

Johann Lamont: The strategic development plans are significant and we want people to work together on them. The power is an important way of ensuring that the plans are developed in the way that has been suggested. The power is not to identify individuals and tell them to do a particular job; we want to ensure that the arrangements for joint working are effective and that management issues do not break the process.

Scott Barrie: On a more local matter, Fife is to be split between the strategic development plans for the Dundee and Edinburgh city regions. There is considerable opposition to that in Fife. How will you ensure an equal partnership between the local authorities that come together to develop the plans and that they work together effectively?

Johann Lamont: Fife will not be split in two, but Fife Council will make an important contribution to the city region plans for Dundee and Edinburgh. Scott Barrie knows Fife better than I do, but it is fair to say that, as Fife has an interest in both city regions, it is important that it is represented at both tables. At present, cities develop and the local authorities in the surrounding areas have to—

Scott Barrie: Pick up the pieces.

Johann Lamont: I would not say that, but that is because I live and work in a city, so I may have a slightly different perspective.

There are anxieties about the proposal, so we must tease it out to reassure people. The strategic plans are a positive development and people in Fife should see them in that light. They might feel that Fife will be overwhelmed by the other local authorities that are involved, but we are keen to stress that the process is about co-operation and developing a strategy that is in the interests of all the authorities, rather than about one authority imposing its will on others. We must work towards that and ensure that any anxieties about councils being pushed around are dealt with as the process goes on.

We understand that concerns exist about the identification of boundaries. We are considering introducing helpful wording in the bill that avoids the perception that we are splitting Fife in two. Fife Council has its integrity and interests, but it will want to contribute to the two city regions. Management issues arise about where the boundaries will lie, so we must find a way of flagging that up in the bill.

Scott Barrie: That is absolutely right. The issue is about where the boundaries are drawn and which areas might become less important. The salient areas near the two bridgeheads are important to the local authorities to the north and south of Fife, but the contentious matter is how far into Fife the regions will go. I accept that Fife will not be split in two, but there is a temptation to think that, because we will have to draw the line somewhere, which will obviously cut Fife. That is where the difficulty lies.

Johann Lamont: The critical point is that boundaries will be agreed by consensus or, if there is no consensus, the Scottish ministers will have a role. The underpinning idea is not that one council will impose its will on another one; the aim is to find a way of harnessing all the energy. Therefore, Fife Council will be at the table arguing on the challenging issues. For example, I am sure that travel-to-work patterns are not, as one might expect, that people who live at one end of Fife go to Edinburgh and people who live at the other end go to Dundee. Fife Council is best placed to point that out and make its case. Issues arise about getting a consensus on the strategic plans.

Jim Mackinnon: I make it absolutely clear that the bill will not give ministers the power to transfer staff or appoint people to specific posts. For pay and rations purposes and other employment reasons, the people in the strategic development team must be employed by a particular authority. Under the arrangements in Glasgow and the Clyde valley, which are a model for the arrangements that we are trying to roll out, Renfrewshire Council has that responsibility. The point of the power is to avoid creating a separate legal entity, with ministers directing who should be employed.

Scott Barrie asked how people feel about working in partnership. A lot of partnership working happens already. When the Glasgow and Clyde valley structure plan team was set up, concerns were raised that the city would dominate in the arrangement. However, that has not proved to be the case. Each authority contributes equally to the costs of managing the structure plan team, which works extremely well.

As the minister said, splitting Fife is not the intention. The bill will give ministers powers to designate authorities that will be required to co-operate for the purposes of strategic development planning, but it will be up to those authorities to

decide what the appropriate boundaries should be. Given the different travel-to-work and housing market areas, judgments about boundaries will need to be made.

We will consider whether there is scope for overlapping boundaries when we develop the associated regulations for strategic development plans. Given that the issue might arise in a public inquiry whether a strategic development plan applies to a particular area, we consider that boundaries of some sort will be required. The situation that we envisage is that the authorities involved would determine the precise boundaries, but overlapping boundaries may be possible in certain areas such as Fife, where certain communities might function as part of both the Edinburgh and Dundee areas.

Mary Scanlon (Highlands and Islands) (Con): Excuse my hoarse voice. Was consideration given to including on the face of the bill a requirement that communities be consulted? That would reassure people that they will be fully included.

Johann Lamont: There is a critical need for early engagement with communities, which we have striven hard to establish. As has been identified, it will be important to involve communities early not only in the development plan but in specific proposals, which will need to be highlighted to neighbours who might be affected. We are doing a lot of work—I do not say this lightly—around community engagement and involvement. As well as publishing a planning advice note on the matter, we are ensuring that development plans and planning applications will include statements about what consultation has taken place.

I am keen to lock into the system an expectation that authorities will consult and that they will be judged on the quality of their consultation. The bill and its supporting secondary legislation will give substance to that expectation, but I am not sure that including on the face of the bill a phrase about consulting communities would deal with the depth of what is expected. I know that some people have argued that the lack of such a phrase in the bill implies that we do not want to require consultation, but that suggestion flies in the face of all that we have said and everything that is locked into the different stages. I do not know whether we could perhaps require that a summary be provided of the different suggestions that have been made at each stage to show that consultation has taken place. However, we really are working on community engagement.

Jim Mackinnon: The bill promotes community engagement in development planning by requiring each local authority to include in its development plan scheme a statement of how it will engage with all its stakeholders in drawing up its development plan. Communities will be key participants, but planning authorities will need to balance their interests with those of other stakeholders in preparing the development plan. Stakeholders will also need to be engaged in the issues report; such engagement was not previously required. In addition, significant proposals in the development plan will need to be notified to owners and neighbours, so people will be made much more aware of what is happening in their area.

The bill will also introduce a new provision whereby the reporter will be required to consider not just objections A, B and C, but whether the quality of engagement was appropriate and whether the planning authority achieved its objectives for engagement. If the reporter is not satisfied that that is the case, he or she can ask the planning authority to undertake further engagement.

The minister mentioned the planning advice note on community engagement. We attach high priority to that advice note, which we are drawing up with the help of stakeholders. We do not normally consult on planning advice notes, but we intend to issue for consultation a planning advice note on best practice in that area. A lot of good practice exists in planning and elsewhere, so we want to draw on that and tap into it. Essentially, we want to move from the current approach to consultation, which is perceived to be fairly mechanical, to genuinely contemporary and high-quality engagement that helps to promote public trust and confidence in planning.

Mary Scanlon: That is helpful.

The minister suggested—if I heard her correctly—that there should be a summary of community engagement. I would find such a summary helpful. Some community councils and others, including many individuals, have had bad experiences over the years. I do not want to get into the third-party right of appeal, but it would help enormously in addressing the problem if individuals were assured that consultation—including the appeals procedure and the pre-application procedure—was real, meaningful and inclusive.

10:00

Johann Lamont: That is right. Consultation is not about sticking something on a lamp post and ticking a box to say that you have done what was necessary. The whole thrust of the bill is against that. If we are to get people involved at the development stage, rather than have them react to an application for planning permission, we will have to work a great deal harder at consulting. We must also be much more imaginative about how

we consult. We will not consult young families at 9 o'clock at night in a village hall, because those people have caring responsibilities that prevent them from attending. Although there are statutory consultees such as community councils, which have a critical role, they are not the only means by which people can be engaged.

I hope that there will be crossover from work that we are doing on community voices and engagement, through the community planning process, which will shape and inform our expectation of consultation on development plans and beyond. If there is not, we will end up with a consultation that engages the consultation-ready folk who have a clear position for which they are able to argue, but which does not get further into communities where folk may be directly affected but do not realise that they have an opportunity to be consulted.

Mary Scanlon: As the minister says, it is important that people have a clear understanding of how the bill will change the consultation process.

You mentioned the new planning advice note. Have you considered adopting the existing national standards for community engagement that were commissioned by Communities Scotland?

Johann Lamont: I have already said that there is important crossover from the work that has been done on community engagement. I say to Jim Mackinnon that, with respect, planners and the planning profession are not necessarily the people who are most tuned into engaging with communities. We have national standards for community engagement and we are currently developing a planning advice note, which must be shaped by something beyond the planning process. We can beat ourselves around the head and say that people do not feel that they have ever been consulted. Sometimes people do not feel that they have been consulted because they have not been agreed with, but that is a separate matter. The new planning advice note should be informed by the energy that exists in other bits of the system with regard to getting into local communities and persuading people to become engaged with issues about which they care. We are keen that there should be crossover and that the work should not be kept in silos.

Mary Scanlon: You mentioned the difficulty for young families of meetings being held at 9 o'clock at night. It is important to encourage people to engage but, given what is in the bill, are you confident that effective and innovative mechanisms, including the new planning advice note, can be identified to encourage early and proactive rather than reactive involvement?

The Finance Committee has expressed serious concerns about the sums of money that have been estimated for expenditure on consultation. It seems to think that the financial memorandum grossly underestimates the amount that is required for meaningful and effective consultation.

Johann Lamont: We are serious about consultation. The committee has received evidence about culture change. That is about saying that consultation is not something that people have to do because they will get a row for not doing it. Local authorities understand that in relation to other parts of their system; some local and planning authorities are very good at understanding it in relation to planning. If you are not close to an issue, you may not be aware of certain concerns. If you engage with people locally at an early stage, you are more likely to get good policy and planning. Authorities should have the confidence to view consultation not as something that they have to do but as something that will support the work of planners and planning authorities. For that reason, consultation must be imaginative.

If we are considering the quality of community engagement, one of the tests that is used is about the extent to which we have been doing more than speaking to lamp posts and holding meetings in draughty halls. Saying it does not make it happen, but it allows us to recognise the importance of working through the proposals.

There is a more general point about the financial memorandum, which we may come to later, but I am aware that the Finance Committee has highlighted a specific problem, which is one of the things that we need properly to dig into. Community engagement need not be hugely expensive, because it is about when and where it is done as opposed to whether consultants are employed to do it. It need not necessarily involve a huge extra cost, and there is a benefit from consulting early, because doing so can prevent problems that might arise further down the line. However, we are mindful of the importance of understanding the financial challenges and of meeting them.

Patrick Harvie (Glasgow) (Green): You mentioned the development plan scheme in response to questions about consultation—I want to be clear about the role of that scheme. Will the regulations that you issue about the development plan scheme specify that such schemes must comply with the planning advice note on consultation? The letter from the Minister for Communities about secondary legislation states:

"The White Paper also states that the schemes will include a consultation statement which will explain how they will engage local people".

Will that tie people to what is in your planning advice note on consultation?

Johann Lamont: If it is identified that people went out and spoke to lamp posts, the consultation will not meet the standard that we expect to be met.

Patrick Harvie: If the consultation does not meet the standard that is to be set out in the planning advice note, what will you do?

Johann Lamont: The planning advice note's purpose is to give advice. We are obviously keen that authorities take that advice. We want to be able to establish that they have taken that advice and worked it through in relation to their community consultation statements. I do not think there is a conflict in that area; it is a question of understanding, not a question of something's being imposed. It will be horses for courses within local authorities, but we want them to be able to establish that they have taken the consultation process seriously.

Patrick Harvie: What would be your threshold for saying, "That's not good enough?"

Jim Mackinnon: The planning advice note on community engagement will be a living planning advice note. The idea is that it should not simply be a case of saying, "That's the planning advice note produced in 2006. End of story." If examples of good practice arise, we intend to post that good practice on the website. As the Deputy Minister for Communities said, the planning advice note will be a benchmark that will highlight good practice. We expect local authorities to build on that and to take an approach that reflects the circumstances of their areas. I suspect that the sort of consultation that might be undertaken in a dense built-up area would be different from the consultation that would be carried out in a remote rural area. Equally, if intensive change is proposed for an area, a different level of consultation might be required than if little is likely to happen in an area. There would be a series of criteria-based policies about that.

It will be essential that local authorities build on the advice note and set out their arrangements in the development plan scheme to show how they propose to undertake consultation that reflects the nature of the area and the pressures for change. The quality of the engagement that they carry out will be assessed by the inquiry reporter in advance of the local plan inquiry. If he or she feels that engagement has been insufficient and that the planning authority has not done what it said it would do, he or she can ask it to go back and do more.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): To continue on public consultation on development plans, I know that you have said that local authorities will have to prove that they are not merely consulting through the lamp posts in the area, but how will the information that is gathered show that there has been genuine consultation of community groups and not just of a small group of people who are not representative of the wider community?

Johann Lamont: There has to be a consultation statement. The extent to which the authority has fulfilled its commitments in relation to it will be tested at the examination stage. There will be an opportunity to ask authorities what they did and to whom they spoke. There would be evidence of that at that stage. Authorities have to clarify what they intend to do and what they do, which will be reflected in the examination.

Jim Mackinnon: We need to broaden the basis of consultation on development planning. As the minister said, a consultation at 9 o'clock at night in the village hall will not encourage a broad spectrum of the community to become engaged. There are various techniques, such as citizen juries, whereby we can detect the views of a wider cross-section of the community. We expect planning authorities to take a more contemporary approach to consultation, rather than just taking the lamp-post approach—I feel a planning advice note on lamp posts coming on.

Cathie Craigie: It is important that we engage with all groups in the community. How will you ensure that local authorities do that and that they treat people equally? We are consulting groups such as Gypsy Travellers, young people and people from minority ethnic communities. Will local authorities have to demonstrate to the reporters that they have engaged with such groups?

Johann Lamont: That is an important issue, because we are talking not just about geographic communities but about communities of interest. We have to meet the challenges of the equalities agenda and we have a responsibility to reach out to different communities, of which local authorities have to be mindful.

The proposals in the white paper—and therefore, logically, in the bill—provide a greater opportunity for all interested parties to engage at an early stage. Planning authorities have to demonstrate what they will do to ensure effective community engagement. We should test that against the access and equalities agenda; the provision of forms in different formats is part of that. The things that are meat and drink to us in relation to equal opportunities in other areas have to inform and shape this work. There has to be dialogue about that within local authorities, which have to be supported in their planning authority role, particularly in relation to community engagement.

John Home Robertson (East Lothian) (Lab): Before I move on to ask about key agencies, I have one follow-up question on consultation. I was struck by what the minister and others said about the typical meeting in a draughty village hall at 9 o'clock at night. At that time of night many of our constituents, particularly those with young families, are likely to be watching telly. If we want realistic consultation and information about important planning issues that affect the whole of Scotland, it is important to get broadcasters engaged so that instead of waiting to report a confrontation much later in the process, they report proposals early on. Has the Executive had any discussion with broadcasters about the role that they can play in getting information out to help ensure that there is realistic consultation early on? I know that that is difficult.

Johann Lamont: I am not so sure about involving broadcasters, although there is an opportunity to raise the issue with them. There has been discussion about that in other places. It strikes me that local newspapers, such as evening city papers, can be effective in providing information and supporting local campaigns, as we are all aware. They could play a critical role in giving people information about development plans to allow them to engage at an early stage. Such papers are rigorous in chasing down local issues. Planning is a critical issue. We will all benefit from people being engaged in the development plan process. I would certainly be interested in hearing how local newspapers think they can best be supported to do that job, if indeed they need such support. Another wee bit of the culture change that we are talking about relates to the critical role that newspapers play in sharing information with people in their communities.

10:15

John Home Robertson: That is an important part of the culture change that is required if we are to move to a proactive approach to planning.

I will move on to key agencies. The committee received a helpful letter from Malcolm Chisholm, which explains the proposal to list the key agencies for consultation. I note that the agencies on the list are the usual suspects. That is quite right, although the list might need to be added to.

It is not just for the purposes of consultation on developments that the key agencies need to be engaged: it is also crucial that we get them to sign up to their duty to play their part in facilitating appropriate developments. The committee has heard evidence that that does not always happen, which causes problems. What action will you take if the key agencies' duty to co-operate with planning authorities proves to be insufficient to ensure that plan objectives are delivered?

Johann Lamont: We are at a key point in ensuring that key agencies are not simply passive consultees that come in and say something if they feel like it. It is crucial that they engage actively and that they regard that engagement not just as a right but as a responsibility. They have a responsibility to ensure that the final decisions on the development strategy are consistent with their business plans.

There are questions about how we manage disengagement. There has to be pressure to change the culture in the key agencies so that they appreciate the benefits of development plans that acknowledge what they are doing and what they aspire to. They should not have to be dragged to the table. The change is a positive thing for them. We have explored the possibility of legal sanctions, but we do not believe that they would be practical or effective. There must be protocols between key agencies and planning authorities on what will be expected. We argue that such protocols will be effective. We must not underestimate the importance of the active engagement of key agencies in development plans.

Jim Mackinnon: May I pick up on a couple of those points? First, the engagement of key agencies in the planning process is critical, but the planning authorities will have to demonstrate how they will balance the various interests that they take into account. For example, Scottish Water might have a particular view about the pattern of development, but that view might conflict with transport policy or green-belt policy. As development plans are taken forward, some pretty hard choices will have to be made. We want to ensure that development plans articulate those choices and explain how they came about.

Secondly, we propose a statutory duty to update action plans every two years. We want to get away from the idea that a development plan is an end in itself, so the objective is to plan on the basis of a two-year update to demonstrate what is going to happen. That will involve a lot of hard discussion with the individual agencies about funding for infrastructure and so on. It is probably impossible for them to commit funding 15 to 20 years ahead, but they can make a commitment in the short term and demonstrate how the plan is being taken forward. That will be a key part of the process. Ministers cannot prescribe how those relationships will work out in different parts of Scotland.

John Home Robertson: The minister said that the Executive concluded that the imposition of legal conditions would be difficult—

Johann Lamont: Legal sanctions.

John Home Robertson: You said that legal sanctions would probably not be effective. I

understand the technical point. You also talked about proactive involvement in action plans. Have you given any thought to the case for imposing on the key agencies a specific duty to act proactively to fulfil the objectives of agreed plans? That duty is important.

Johann Lamont: The key agencies will be required to co-operate in the preparation and delivery of development plans.

John Home Robertson: You will not be surprised to hear that we all have constituency experience of difficulties with Scottish Water. It has been put to us in evidence that developers and planning authorities experience difficulties with ensuring that water and sewerage infrastructure is provided so that agreed plans can be fulfilled. Does Scottish Water have the resources to deliver the required infrastructure? What can you do to ensure that Scottish Water gets its priorities right when it allocates resources in connection with necessary planning developments?

Johann Lamont: Scottish Water has confirmed that it has sufficient resources to fulfil the requirements that the Water Industry Commission for Scotland has specified. The challenge of getting our infrastructure to match our aspiration for affordable housing runs through Parliament's work. The committee knows that challenge better than most. Significant resources are available for that, so the challenge is to match Scottish Water's priorities with local priorities, which cannot be done unless there is engagement and discussion at the development planning stage. The better those can be married, the more effective the matching of infrastructure with the development plan will be. That is why we accept that it is so important that Scottish Water and other key agencies engage with development planning. It will be of benefit to them to see and be able to shape the broader picture, although that is not to say that it will be easy.

Patrick Harvie: You will be aware that we have heard a range of views on sustainable development from different witnesses; some feel that it should, if anything, be beefed up in the bill and others have concerns about what it will mean in legal terms. Will you respond to the different views that have been discussed in the committee and give us your view on how sustainable development should be defined?

Johann Lamont: We all agree that planning is a key means of delivering social, economic and environmental sustainability; that is already recognised in our planning policies. It is significant that there will be a new statutory duty on planning authorities to exercise their development planning functions with the objective of contributing to sustainable development. That duty is part of our commitment under the sustainable development strategy, but I realise that there are different views on it. The Law Society of Scotland has said that there is a potential for legal challenge, while the Convention of Scottish Local Authorities has suggested that there needs to be more flexibility. We agree with COSLA, which is why there is no statutory definition of sustainable development in the bill or in any Scottish act.

It is a matter of continuing dialogue. The concept of sustainable development is constantly evolving. The danger of including in the bill a definition, as some people argue we should, is that to do so would be to deny that fact. Things change and we learn all the time; we think about things differently now than we did even 10 years ago. Therefore, we feel that a statutory definition could place a legal straitjacket around a complex, broad-ranging and developing concept. It could mean that the courts would end up deciding what is or is not sustainable. We do not think that that decision should necessarily be made in the courts.

The concept is probably better understood through a political dialogue in Parliament, between the Executive and Parliament, and throughout Scotland as a whole. We intend to prepare guidance on the implications of the sustainable development duty for development planning authorities. We think that that will provide a more appropriate vehicle for explaining how the concept might apply to the process.

Patrick Harvie: I appreciate that we should avoid the danger that you describe as "a straitjacket", but the converse danger is that too much flexibility will allow people to ignore sustainable development if, for whatever reason, they consider it to be unnecessary or misunderstand it and think that it is a nice-to-do extra instead of a fundamentally different approach to development. How does the bill avoid that danger?

Johann Lamont: I understand that, but the guidance that we will issue on the implications of the sustainable development duty will highlight that it is not only an extra and that it should be taken seriously. The guidance will be issued in the context of the sustainable development strategy that the Scottish ministers have devised. If we are talking about culture change, we are talking about the political context in which the bill will be implemented. Political will must be attached to its implementation, and that is part of the political process, which goes beyond planning.

We regard the sustainable development duty as important. Therefore, we will prepare guidance on its implications. It is not our intention to issue guidance that could be disregarded.

Patrick Harvie: When will we be able to get some idea of what you intend to put in the guidance?

Jim Mackinnon: We aim to produce guidance towards the end of the year so that it ties in with the final part of the bill's progress. That is our indicative programme for the guidance.

Patrick Harvie: Sorry, but I could not hear what you said.

Jim Mackinnon: We aim to produce guidance by the end of the year, but we obviously want to consult on it because it is important that there is an understanding of how the planning system can contribute to sustainable development. As the minister said, there is guidance in Scottish planning policy 1 about planning's role in sustainable development. However, there is scope for unpacking that guidance; I see no reason why we could not issue draft guidance later this year.

Patrick Harvie: Why did the Executive decide to apply the sustainable development duty only to development planning functions?

Johann Lamont: The issue is efficiency in the management of the system. We believe that to do otherwise would create legal uncertainty and conflict over whether individual developments will contribute to sustainable development. I suspect that Patrick Harvie and I could argue all day long about whether individual planning proposals are sustainable.

Patrick Harvie: Some other time, perhaps.

Johann Lamont: Absolutely. That emphasises the fact that a political discussion is involved. There are political arguments about such matters, which probably ought not to be resolved within a planning authority's decision-making process. There should be a political debate and a political consensus on the issues. All our political parties should contribute to the debate.

The potential for legal challenge would be considerable if the sustainable development duty were to be applied to individual developments. There are approximately 50,000 planning applications in Scotland every year. We believe that application of the duty to individual developments would affect the efficiency of the system.

The fact that there is a development-plan led system means that applications are tested against the development plan. The plan will include a duty to have regard to sustainable development, so I argue that that begins to shape a view on individual planning applications. We would not, however, go so far as to say that the duty should apply to individual applications.

Patrick Harvie: I think that it was COSLA that suggested that a local authority's general approach to development management would have to be spelled out in its development plan, so that approach would have to be consistent with sustainable development. Do you agree with that view?

Johann Lamont: We have stated what the relationship of the development plan is to sustainable development. As the development plan is a crucial factor in determining what development will happen, it is clear that in relation to sustainable development any planning application will be considered in that context. That is different from applying the test of sustainable development to each individual application.

Jim Mackinnon: I will add a couple of points. The point about applying sustainable development tests to development planning is that sustainable development is an holistic concept that seeks to balance economic, social and environmental considerations. The application of the duty to development planning means that the area as a whole is being considered rather than an individual development. Sustainable development is not about a series of short-term fixes: it is about looking to the longer term.

I will give a practical example of the issues that would arise in applying the test of sustainable development to the 50,000-odd planning applications. There is a duty on sustainability in relation to building standards. That can be unpacked on matters such as accessibility for disabled people and energy efficiency, so those standards can be assessed more easily. However, let us consider the case of a planning application for a house in the countryside that is 10 miles away from a main road and where two of the occupants will require to drive every day to get to schools, hospitals, their places of employment and so on. Even if the house is designed on eco-friendly principles the judgments that have to be made are quite complicated.

Patrick Harvie: Okay. That is fine, convener.

John Home Robertson: I move on to supplementary planning guidance. The minister has expressed commendable support for the principle of local decision making. She is right about that, but some mechanisms in the bill provide for central control—I suppose that old habits die hard. COSLA has made the point that planning authorities are perfectly well equipped to produce their own supplementary planning guidance to deal with local circumstances. Why have you felt it necessary to require planning authorities to submit supplementary guidance to ministers and to provide a power for ministers to be able to require modifications?

10:30

Johann Lamont: Supplementary planning guidance that has been prepared with an appropriate level of consultation will be given a higher status in the planning system, so it is important to get it right. An important component of the proposals is to streamline development plans to make them quicker to prepare. Supplementary planning guidance can be used to set out the detailed implementation of a policy, for example on affordable housing or the contribution with respect to education. Because the guidance is important, there is an issue of consistency. It must be subject to the proper scrutiny, which is why the power of intervention is there.

John Home Robertson: Is the intention to take a light touch in that regard? Are you after consistency across the country, but without curtailing local councils' appropriate authority to make their own decisions?

Johann Lamont: I would never wish any local authority to think that I wanted to be heavy handed with them, given my historical commitment to local authorities and to the challenge of the different layers of government working together in harmony. Interventions would not be made lightly, and we would expect them not to happen terribly often. In fact, we expect interventions to be rare, which should make the partnership with local government a great deal easier.

Jim Mackinnon: I will advance that argument. One of the key aspects of planning reform is to make development plans sharper and more focused. That means that there is a role for supplementary planning guidance, which can be targeted more specifically. For instance, a consultation on affordable housing could be much more focused if it was done with housing interests, rather than being wrapped up in a general statement in the development plan, where its key importance might be missed. We want to ensure that the supplementary guidance is rooted in the development plan. That is important, as it is a development or an articulation of policy. We also want to ensure that adequate consultation is carried out.

As the minister said, we are considering a light-touch approach in this respect. It is not about vetting every piece of supplementary planning guidance in Scotland but about balancing the planning authority's discretion and the legitimate role of the local authority. It is a matter of making development plans more focused and more purposeful and of allowing for more targeted engagement on specific issues. For example, if a conservation area management strategy was to be drawn up for the centre of Haddington, that would not be of particular relevance for folk living in Port Seton or Prestonpans. The proposed approach is much better and more sophisticated. It allows us to recognise where things have been done in a way that is entirely in line with the development plan, and we will be examining the wording that we use to give the reassurances that the local authorities want.

John Home Robertson: Thank you—you are mentioning all the right places.

Euan Robson (Roxburgh and Berwickshire) (LD): I wish to discuss inquiries into development plans. Under the bill, individuals or communities will no longer have the right to prompt a public inquiry by objecting to an aspect of a local development plan. From local experience, I know that that is a valuable right, and the proposal seems to run counter to the stated aims of modernising the planning system, making it more open and accessible and encouraging community involvement. Perhaps you could assist by giving some of the reasoning behind the policy.

Johann Lamont: There will be mandatory examination of all development plans objections against which have not been withdrawn. We hope that the examination process can be managed more effectively and speeded up while remaining just as robust. Indeed, the commitment to the process being robust remains.

We are aware of the conversation about how to take the adversarial aspects out of the planning system and to allow people's voices to be heard. The bill makes it clear that if objections are not withdrawn, there must be an examination. We do not seek to cut people out of the process. However, we want to manage the examination process more effectively, using a range of techniques, depending on the issues that are considered. We will all be aware that formal inquiries can sometimes be lengthy and complex and are not the best place for people to feel comfortable in making their case. They are only really necessary when the reporter needs to get further information from the objectors. In most cases, hearings or even written submissions provide an effective way of understanding the arguments. I think that we all agree that hearing individually 2,000 or more objections to a local development plan would not be effective. We are considering guidance on when the different procedures would be used. We certainly do not intend to cut people's capacity to be party to an inquiry when they have serious objections and significant concerns.

Euan Robson: Unresolved objections are to be subject to examination. What is the difference between that and the public inquiry process?

Jim Mackinnon: To avoid doubt, I make it clear that the bill creates a mandatory duty to have a public inquiry on and examination of strategic development plans. That is very different from the

current situation. For 20 years, we have not had examination of structure plans, which set the long-term context for growth and regeneration. That is a significant step. The other significant step is that local authorities will no longer appoint reporters to local development plan inquiries; reporters will be independently appointed by the Scottish ministers.

There is always a difference of view about whether cross-examination by a Queen's counsel or another lawyer is an effective way of dealing with planning objections. As the minister said, at present, many issues are dealt with through written submissions. People are happy for an independently appointed person to take account of their views in a report. I suspect that a public inquiry is the more appropriate process when the information is uncertain and needs to be explored in more detail, but the situation is different when an individual, the planning authority and perhaps others in the community simply have a difference of view.

We will need to issue guidance and advice to ensure that a consistent approach is taken. The aim is to have a more efficient and less adversarial process. As I said, not everyone is comfortable with what can often be robust cross-examination by legal professionals. The three options are written submissions, an informal hearing and a public inquiry. I suspect that every local plan will go through a mixture of those processes. I suspect that we would like more to be dealt with by written submissions and in hearings, but there is no doubt that, in some circumstances, a public local inquiry at which evidence is rigorously tested will be appropriate.

Euan Robson: I presume that that combination of reasons is why the reporter can determine the procedure that is to be adopted in an inquiry. If the emphasis is switched away from the local authority to the Executive appointing the reporter, it is logical to allow that reporter to determine the means by which he or she obtains evidence or hears issues.

Jim Mackinnon: That is the case, but that will happen within a framework of guidance and advice. We intend to update the codes of conduct on public inquiries to ensure that we have a code of practice on the conduct of local plan inquiries and on examinations in public of strategic development plans.

Mary Scanlon: I will take you to the far north—to Shetland—and talk about the Zetland County Council Act 1974. The policy memorandum to the bill says:

"Extending planning controls to the 12 mile limit would do away with a dual control regime".

What discussions have you had with Shetland Islands Council about the impact of the bill and about the existing powers under the 1974 act?

Johann Lamont: The proposal reflects the will of the Parliament and will give effect to a decision that the Parliament made some time ago. The main provisions to transfer marine fish farms into the planning regime were enacted in the Water Environment and Water Services (Scotland) Act 2003 and were proposed by the Transport and the Environment Committee during the parliamentary process; the Scottish Executive did not promote the proposal. The Executive thought that the committee's position should be taken on board and discussion and consultation about the implications of the approach took place at the time.

In response to Mary Scanlon's main point, the bill will have little impact on the Zetland County Council Act 1974. The only substantive change will be the extension of planning controls for marine fish farms throughout Scotland from the current 3-mile limit to the 12-mile limit. If the bill did not do that, marine fish farms would be subject to planning controls up to the 3-mile limit and to the works licensing regime between the 3-mile limit and the 12-mile limit. Therefore, the bill requires the repeal of provisions in the 1974 act in relation to marine fish farms between the 3-mile limit and the 12-mile limit.

Mary Scanlon: The repeal of provisions in the 1974 act is not mentioned in the schedule to the bill.

Are you satisfied that adequate consultation was carried out by the Transport and the Environment Committee to ensure that Shetland Islands Council will have no concern about the proposed changes?

Johann Lamont: The Parliament was clearly satisfied, because it passed the Water Environment and Water Services (Scotland) Act 2003 and the Transport and the Environment Committee was satisfied that the matter was of such significance that it should be dealt with in a bill that did not originally contain provisions on the matter. The provisions in the 2003 act gave effect to the Parliament's will and did not originate from the Executive, as I said. If Mary Scanlon examines the history of the issue, she will be able to judge whether the Transport and the Environment Committee was satisfied that there was adequate consultation.

Mary Scanlon: I am now quite confused. We are talking about an important matter. The policy memorandum says:

"At present, the Zetland County Council Act 1974 gives Shetland Islands Council powers to grant works licences in territorial waters adjacent to Shetland",

and goes on to say that if those powers were retained there would be "two control regimes". Therefore, according to the policy memorandum, the bill will override the 1974 act because:

"Extending planning controls to the 12 mile limit would do away with a dual control regime".

However, you said that legislation has already removed the powers in the 1974 act.

Johann Lamont: No. The Parliament agreed that there should be a single planning regime for fish farms. There was huge pressure on the Executive to agree with that approach and I understand that as a consequence there were implications for the 1974 act.

Mary Scanlon: However, the policy memorandum says,

"Extending planning controls to the 12 mile limit would do away with a dual control regime",

which assumes that there are currently two regimes.

Tim Barraclough (Scottish Executive Development Department): I will explain the technical detail. The Water Environment and Water Services (Scotland) Bill was amended to allow ministers to make regulations to extend the planning regime to fish farms up to the 3-mile limit. Therefore, regulations under the Water Environment and Water Services (Scotland) Act 2003 are all that is required to implement that policy. The Planning etc (Scotland) Bill recognises that in Shetland—and only in Shetland, I think—the works licensing regime extends beyond the 3-mile limit to the 12-mile limit, so the bill will remove the potential anomaly whereby implementation of the provisions in the 2003 act would mean that there were planning controls only up to the 3-mile limit and the works licensing regime would apply between the 3-mile limit and the 12-mile limit. The bill will tidy up that aspect of the 2003 act. All the provisions that relate to the matter, including the repeal of provisions in the Zetland County Council Act 1974, can be implemented through regulations under the 2003 act, rather than through the bill.

Mary Scanlon: I was not involved in consideration of the Water Environment and Water Services (Scotland) Bill, so I must accept your explanation.

Will the bill override the ancient Nordic udal law according to which land as far as the low water mark is owned by crofters and others? Did the 2003 act deal with that matter, or does the bill make provisions in that regard?

Johann Lamont: That is a technical question too far for me. I do not want to give a wrong answer, so I refer to Mr Barraclough.

Tim Barraclough: We checked the position after Ms Scanlon raised the issue at a previous committee meeting. Lynda Towers may correct me, but our understanding is that the bill's provisions will have no effect whatever on udal law. Udal law is to do with ownership of property and the bill will have no effect on that.

Mary Scanlon: So the rights of the crofters and land owners in Orkney and Shetland under udal law will still stand—that law will not be overridden or repealed by the bill.

Lynda Towers (Scottish Executive Legal and Parliamentary Services): It will be overridden only to the extent that people will require planning permission in respect of use of the land, but the bill does not affect their ownership or other use.

10:45

Mary Scanlon: So the extension of planning control to the 12-mile limit will not impinge on people's rights, either.

Lynda Towers: No.

Mary Scanlon: Did you consult anyone on the effect on udal law? At a previous meeting, I asked officials to clarify the issue in writing. I have looked out for that clarification, but I have not received it. Have you consulted people in Orkney and Shetland and are they satisfied with the provisions?

Johann Lamont: I will check whether the correspondence that you should have received has been issued and, if not, it will be issued.

Mary Scanlon: That would be helpful.

Christine Grahame (South of Scotland) (SNP): Why did the Executive decide to reduce the period for appeals from six to three months, given that we understand that the measure has caused problems in England?

Johann Lamont: One reason why people are anxious to have a third-party right of appeal is the sense that the balance is not correct in the first-party right of appeal, so we wanted to consider that balance. The period of six months creates uncertainty during which local communities are not clear whether decisions will be appealed. The change from six to three months is to concentrate people's minds. There are indications of a backlog in England, but that is not necessarily a consequence of the change there.

Christine Grahame: That is interesting, given that paragraph 232 of the explanatory notes states,

"It is difficult to assess the combined impact of these three reforms",

one of which is the shortening of the period for appeals. The experience in England allows us to assess the impact of the reform.

Jim Mackinnon: You are absolutely right that the number of appeals in England has increased significantly. It has been suggested that the reduction in the timescale from six to three months is a contributory factor, but other factors have

contributed, too. It is argued that the planning delivery grant, which requires local authorities to make decisions more quickly, has resulted in the refusal of many more planning applications. I think that the rate of refusal of planning applications in England is about 50 per cent higher than it is in Scotland. We will check the figures, but I believe that about 90 per cent of applications are granted permission in Scotland, while the figure for England is 85 per cent, which means that there is a much greater volume of appeals.

It is important that the measure is seen in the context of the package of planning reforms, rather than as being only about appeals. We propose to review permitted development rights, so there should be fewer small-scale appeals overall. It is difficult to predict the future, because we do not know how people will behave. In Scotland, we are considering not only appeals but a reform of the whole process.

Christine Grahame: You say that we must consider the changes as a package. Evidence from developers and local authorities suggests that the aim is to speed up the planning process. If we are speeding up the process, might not the unintended consequence be more appeals?

Johann Lamont: That is one way of thinking. On the other hand, the change might concentrate people's minds. We hope to set a context within which people do not make speculative appeals, as they will be able to establish from the development plan whether an appeal is likely to be successful. We must think about appeals in the context of the whole process. It is not in the interests of local communities to have an appeals system that can go on forever. We have heard stories and anecdotal evidence about people feeling ground down by putting in new applications and appealing. That is why we want to address the issues.

Jim Mackinnon: We want to change the nature of appeals. Local appeals tribunals will be set up to deal with local matters. Also, we are moving towards a review of the decision of the planning authority, rather than requiring a huge amount of additional information.

Christine Grahame: I had a supplementary question, but it went out of my head while you were talking about the appeals procedure. I hope that it comes back. I will ask another question and I may come back to it.

I want to ask about exceptional circumstances. The bill says that additional material cannot be raised at an appeal unless

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

well, that would simply be a matter of evidence—or

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

I cite the homely story of the rogue badger that moved its holt without planning permission. We understand that that would be an exceptional circumstance, but that is an easy case. However, who will decide on exceptional circumstances in appeals on difficult cases?

Johann Lamont: We are keen that the appeal process should become a review of the decision that is taken by the planning authority rather than an opportunity to present entirely new justification in favour of a development or a different slant to make it more acceptable. That goes with the grain of people's experience of the use of appeals. Such adjustments should have been made at an earlier stage, and the proposal gives applicants an incentive to engage at an early stage with decisions about what is acceptable instead of thinking, "If I get past this and get to the appeal, I can make my case then."

As you have said, there are bound to be some occasions on which genuinely new material is taken into account, including a change in Government policy, but the circumstances will have to be exceptional. It should be for the decision maker to judge whether new material should be submitted on the basis of the arguments that are put.

Christine Grahame: So you are not going to issue guidance or examples of exceptional circumstances, as you have in the note that we have received on what constitutes a variation. I do not think that I saw that in the minister's letter on regulations. There are definitions of what would be considered a substantial or an insubstantial variation, but I do not think that there are examples of what are and are not exceptional circumstances.

Johann Lamont: I can give you an example. If a development plan policy had been adopted in the period since the application was considered or if there was a new statement of Government policy, those would be exceptional circumstances. In considering whether something is exceptional, the emphasis will be on convincing the authority that it is exceptional and should be taken into account.

Christine Grahame: Court cases will probably provide the ultimate decisions on narrow definitions.

What if a community does not agree with the decision that certain circumstances are exceptional? Does it have any role? We have dismissed a third-party right of appeal, so do you see a role for a community in challenging the definition of exceptional circumstances—I mean in the law, not necessarily in court? Perhaps that

would happen under judicial review. Might a community challenge the definition?

Jim Mackinnon: I would guess that a community could challenge the decision in the courts if they so chose, although Lynda Towers may have a contrary view.

Christine Grahame: I have agreed that.

Jim Mackinnon: We are trying to move towards a situation in which the appeal—whether it is to the inquiry reporters unit or to the local review body—is a review of the decision of the planning authority. For example, communities are not going to be saying that they thought that a planning application was for 50 houses, with an access in such-and-such a place and a mix of such-and-such houses. We want to move to a situation in which, if that is the proposal, that is the basis on which the appeal will be conducted. Exceptional circumstances would not change the nature of the proposal but, as the minister has said, there may be a new piece of Government policy on, for example, affordable housing, which might be relevant to the case in point. I suspect that the matter will always be open to legal challenge if people want to go down that route.

Lynda Towers: The matter would certainly be open to judicial review in the courts if a community was not happy that the reporter was considering exceptional circumstances in the appropriate way. I emphasise again the fact that exceptional will mean exceptional. What you said earlier was correct: the definition of what is exceptional will develop through what the courts say. The intention is to move things forward on the basis of the original decision.

Christine Grahame: Thank you. Given that the provisions on appeals interact with other parts of the bill that are to do with speeding up the planning application process—and there are other parts of the bill to which this might apply—will you consider having a section in the bill for review of the operation of the bill after a period of time? That is the practice in states such as Alberta, where provision is made for statutory review of a bill when no one knows how it will operate in practice, which allows the bill to be amended later. There seems to be a lot of interaction in this bill, but you do not know how the consultation or the speeding up of the planning process and the different appeal process will operate. You concede that

"It is difficult to assess the combined impact of these three reforms".

Would it not be a route to go down—you might not want to answer this today—to build a statutory review period into the bill?

Johann Lamont: It is good government always to reflect on and review the legislative process, how legislation is developing and what the challenges are. I always talk about the law of unintended consequence. It would be a perverse Government indeed that did not recognise the law of unintended consequence and address it. That is not something that needs to be put in the bill; it is a matter of good government.

The bill is not for its own sake; its purpose is to make the planning system more efficient and to get people more involved. If those aims were not achieved, then even if we were entirely satisfied with the bill, the political pressure from our local communities would be such that we would have to address that. Some of that is about politics; some of it is about the responsibilities of locally elected representatives. I do not think that a statutory review needs to be written into this bill in particular—when we have passed other bills, people have made the same point. The Executive and I are committed to having a planning system that is more efficient, that delivers economic and social opportunity, and that ensures community involvement. If it were established that the bill was wilfully doing the opposite of that, we would address that—that is the nature of government.

Christine Grahame: Yes, but my point is that the same people are not always in government. As far as possible, we should bind subsequent Scottish Governments to a review of the legislation.

Johann Lamont: There is nothing to prevent future Governments from abolishing the bill, if it is passed. I see no reason why we need to put a provision in a bill that identifies the responsibility of all elected members to be mindful and watchful of the impact of legislation and the need for further legislation—or, indeed, of things that are not to do with legislation. There are things that are identified in legislation that may not be successful because there is a breakdown of commitment to deliver what the legislation identifies. That would be dealt with at an administrative and political level.

Patrick Harvie: I have a quick follow-up question on the point about parties to the proceedings not raising matters in an appeal that were not before the planning authority when the decision was made. Can you help me to understand the wording of the provision? The bill states:

"a party to the proceedings is not to raise any matter".

What does "is not to" mean there? Does it mean that if someone tried to raise new material, the appeal body would be entitled to disregard it or would have to disregard it, or would raising it make the appeal invalid?

Johann Lamont: We are saying that the appeal should be a review of the decision that was taken by the planning authority, rather than an opportunity to present entirely new justification,

and that new material could be raised only in exceptional circumstances. That seems to be a clear indication of what the appeal should hear. I do not know whether there are legal niceties around that of which I should be aware, which you may wish to flag up.

Patrick Harvie: It seems clear what the provision is intended to achieve; I just wonder what the consequences would be if a party attempted to raise new material but it was decided that exceptional circumstances did not apply. Would the appeal body have an obligation to disregard that new material or merely the discretion to disregard it?

Johann Lamont: In making the appeal decision, the authority cannot take account of information that is new unless there are exceptional circumstances.

Lynda Towers: It is a question of drafting. You are correct to say that the intention is for such material not to be raised. Anybody who was making a decision in this context would not take account of that information. It is not unusual in a court or inquiry situation for the decision maker to hear evidence and, where questions arise about its relevance, decide not to take account of it in the decision-making process. In this case, the reporter is likely to indicate that he or she will not take into account certain information, because the circumstances are not exceptional.

Patrick Harvie: Thank you. That is helpful.

11:00

Scott Barrie: In your introductory remarks—which seem like an eternity ago—you talked about the hierarchy of development streamlining of the planning process. How do you define "national developments"? Last week we heard that COSLA was concerned that a major urban regeneration project that a local authority was nurturing could be defined as a national project. Will you comment on that?

Johann Lamont: It is worth explaining the point of the hierarchy and flagging up its importance. The hierarchy, whereby each development that requires planning permission will be classified as national, major or local, allows for a more proportionate response to planning applications, with the introduction of different application procedures for different types of development.

National developments will be identified in the NPF. Major developments will be those that take longer than two months to process, owing to their size and complexity. The need to obtain planning permission for a range of minor essential household developments will be removed, which will free up capacity in planning authorities to process larger applications.

It is worth observing that, as the planning minister, I am struck by the range of issues that comes across my desk. There is no hierarchy just now, so such issues range from those that relate to one dwelling to those that relate to something more significant. There is a general view that the hierarchy is logical and makes sense.

Different procedures apply to each designated category of development. The national development category, which you flagged up, covers a small number of developments, which would be identified as national developments within the national planning framework. Such developments are those that Scottish ministers consider to be of national strategic importance. Local development plans will be able to reflect what is in the national development plan. The essential test will be whether the development is of strategic importance to Scotland's spatial development. Fortunately, we will have people who have a great deal more expertise than I do to support us in making such decisions. We are talking primarily about major strategic transport, water and drainage and waste management infrastructure projects. Those issues can be explored in the consultation on the scope and context of the next NPF.

On the point that you made about COSLA, if a project is in the national planning framework, that is an acknowledgement of its importance to Scotland and signals ministers' support for it. The planning application procedure for national projects allows enhanced opportunities for such projects to be called in for ministers' determination. The ideal situation would be for them to be processed efficiently and effectively by the planning authority. If a local authority is nurturing a project—"nurturing" is the word that Scott Barrie and COSLA used—it seems unlikely that ministers would need to intervene to determine an application.

This is a key area where the relationship between the Executive and local authorities has to be developed. The theme of the breakdown of trust runs through the bill. There is no doubt that there is a breakdown of trust in the planning system among communities. That lack of trust can imbue the process at every level. There needs to be trust between the Scottish Executive and local authorities in considering how to take forward certain proposals. Although certain projects will be identified in the national planning framework, they will be experienced locally, so it is important to have that connection.

Jim Mackinnon: I would like to pick up on the specific point that Mr Barrie made about regeneration areas. Earlier this month, the Executive produced its regeneration policy statement, which identified a number of national

areas for regeneration, including the Clyde corridor, the Clyde gateway, and parts of Ayrshire and Inverclyde. The national articulation of spatial priorities is largely reflected in that policy statement, but there will also be major regeneration priorities elsewhere in Scotland that are essentially local in character. The bill proposes that if a regeneration project involves a range of uses above a certain size, with a mixture of retail, housing and business, it will be treated as a major application and be subject to a processing agreement—we have provided the committee with information on those applications that we would regard as major applications that are subject to processing agreements. An articulation of national priorities for regeneration is set out in the regeneration policy statement, but local authorities will wish to pursue regeneration projects locally, whether in Fife, Edinburgh or Lanarkshire, and many developments over a certain size will be classified as major applications and subject to a processing agreement.

Scott Barrie: In the hierarchy of developments, will there be any differences between urban and rural classification? Last week, COSLA said that 100 houses in Shetland is a completely different kettle of fish from a 100-house development in Glasgow or Edinburgh. If there is no difference between urban and rural classifications and we go for consistency throughout Scotland, will there be a problem with the hierarchy of developments?

Johann Lamont: I do not think that classifying a development as major is simply to do with size. It is to do with the impact of the development and the level of complexity involved. You are quite right to say that a 50-house development in a rural area will be experienced differently from a 300-house development in Pollok, dare I say it. However, developments at that level would be matters for local development plans, which are well tuned into how things are experienced at local level. When it comes to major developments, our proposals are intended to ensure the efficient processing of the few very largest planning applications, so I do not envisage that the divide that you have identified between urban and rural contexts will apply to major applications that are complex and time consuming to process owing to their size and on which all parties agree that a decision cannot reasonably be taken within two months.

It is not a matter of disregarding the differences. Although we are looking for consistency across Scotland, one of the reasons why we need robust and strong local authorities is that there must be sensitivity to the way in which developments are experienced at local level. That is critical, so although it is important to point out the danger that the planning system might disregard varying impacts between rural and urban areas, that is something that is already recognised in the bill.

Michaela Sullivan (Scottish Executive Development Department): I would like to build on what the minister has said. It is important to explain that the intention with major developments is to ensure that we can deal with the huge planning applications—involving a wide range of agencies, section 75 agreements and consultation with Scottish Water, local education authorities, affordable housing providers and so on—which cannot reasonably be determined within the two-month period. The purpose of the major application category is to recognise that and to say, "Okay, this is an application for a very big project with a big impact, which will take a long time to determine, so let us agree with one another that it will take 10 or 11 months to process." There will still be certainty in the system. The processing agreement will be put in place with a reasonable length of time agreed, and then there will be a proper project plan and those involved will be able to work together to deliver certainty that the applicant will get a decision at the end of that period.

It is not about a proportionate impact on a place; it is about ensuring that a big, difficult application can be processed within an agreed and defined period of time. A 50-house development in Shetland is a big thing for the people of Shetland, but it is not the type of complex application that would necessarily take a long time to process. That is the essential difference that we are trying to establish. The major applications are the ones above a size threshold. It is possible that some authorities in Scotland will never see a major application, but that does not really matter, because major applications are not being processed in a better or more robust way, just in a different way, to reflect their difference. Local applications will also be processed in a proper, robust and effective manner, so that is not a concern. That is the essential difference that we are trying to establish under the bill. Major developments will be those that are above a certain size threshold.

Scott Barrie: I hear what Ms Sullivan is saying about the difference between major applications and local applications, which is that major applications will be processed in a different, rather than better, way from local applications. It is useful to hear that, because some of us have struggled to get our heads round the definitions in the hierarchy of developments. Some witnesses raised the concern that developers might decide, for whatever reason, to play the system so that their development fits into a particular category. If planning applications of one category will not be dealt with any better than applications of the other category, is that concern unfounded?

Jim Mackinnon: Let me explain. A national development will be clearly identified as such in the national planning framework. If a development is not in the national planning framework, it is not a national development—end of story. The bill will require ministers to consult on the form and content of the NPF.

Major developments will be those such as are mentioned in the indicative list that we provided to the committee. Obviously, we will be interested to hear the views of the committee, planning authorities and others when we consult on that list. The final list will go through the Parliament by way of secondary legislation, so members will have another opportunity to scrutinise and debate what should constitute a major application.

I suspect that pressure for certain applications to be categorised as major developments will come from developers who see the benefits of having a processing agreement. However, as the minister and Michaela Sullivan said, we want to provide some fairly consistent standards under the bill. Clearly, if a planning authority wants to treat a planning application in a different way from an ordinary application, it will be able to do so. There will be nothing to prevent it from doing that and we will certainly not legislate to stop authorities doing that.

All other applications for developments that require planning permission will be dealt with in the normal way.

We have focused on ensuring that national developments are identified in the national planning framework and on providing clarity on what constitutes a major development, which will be defined in secondary legislation. As I mentioned, we have provided the committee with an indicative list of what those types of application will be.

Scott Barrie: How will the processing agreements that have been mentioned operate? I take it that they will be introduced through secondary legislation.

Johann Lamont: Processing agreements are a key part of the decision-making procedure for major applications. It is intended that the planning authority and the applicant will agree to a timescale for the processing of such an application and that they will take into account the views of statutory consultees. A project plan will need to be prepared that identifies key milestones and actions for all participants so as to ensure that the application is processed as efficiently as possible, given its size and complexity. The agreement will be on the way in which the application will be dealt with. As the member has indicated, the issue will be dealt with in secondary legislation.

Jim Mackinnon: Let me expand on that. We are also trying to drive culture change in planning. As I mentioned in our earlier discussion on community engagement, we want to front-load the system. Before a processing agreement for a major development is drawn up—such developments will also be subject to pre-application discussion with the local community—the developer will need to deal with the range of issues that Michaela Sullivan identified, such as water and sewerage, transport, education and environmental protection. All the key agencies and different local authority functions will need to be involved early on to ensure that the planning authority's information on the scale of the development factors in the impact that it might have on retail, transport and the environment. The intention is to ensure that such material is submitted up front when the application is submitted, rather than allowing developers to say, "Here is the application, and the retail assessment is in the post." It will be a matter of front-loading the system with respect to engagement with communities and key agencies, ensuring that what is a complex process is managed effectively. That will include milestones and targets.

The discussions that we have held with development industry representatives so far have demonstrated that they are enthusiastic about that approach. They have concerns about planning applications entering a black hole. The proposals might not give them certainty that permission will be granted, but they give them some sort of certainty about the timescale for decisions. That is where we want to go.

The applications are extremely complicated, and they raise a lot of issues. It will be a matter of ensuring that the process is managed, as opposed to it being a purely iterative process. Requests for information, advice and assessment come in at various stages, and that does not give the developer, the planning authority or local communities the certainty that they want.

11:15

Patrick Harvie: You have mentioned waste in this context. I wish you to clarify that you are talking about various different kinds of development, perhaps including landfill, incinerators and recycling facilities. Would the NPF purely identify the capacity that is required, or would it specify developments? If the Committee on Radioactive Waste Management recommended the long-term, deep storage of nuclear waste, and if a site in Scotland were identified, would that facility be included as a national development in the NPF?

Johann Lamont: What I have said is that, under the national planning framework, we are talking about major strategic transport, water, drainage and waste management infrastructure projects. Those projects will of course be subject to all sorts

of consultation. Jim Mackinnon could perhaps give us the technicalities on this: the projects would be identified, but to what extent would the place be identified?

Jim Mackinnon: The national planning framework deals with the spatial consequences of existing policy. On waste, it would deal with the consequences of established Executive policy. I would not like to be too specific at this stage on precisely what the framework will do, but it is certainly not there to fetter the discretion of local authorities on specific sites. For example, it would not say that a particular waste management facility must be at a specific location. That would be for the development plan or, if there is no up-to-date development plan in place, for individual planning applications. The whole idea is to specify developments that are required in the national interest and which reflect existing policy that has been established elsewhere. The national planning framework is there to provide some general endorsement of such developments.

Let us take the reopening of the Borders railway, for example. The locational variation there is virtually nil, as we might expect. However, there may be many options with respect to other facilities. For instance, there might be opportunities for biomass facilities to be built in various different parts of Scotland. The intention is certainly not to fetter the discretion of individual local authorities to take decisions on precise locations, design, environmental impact and so on.

Patrick Harvie: If a recommendation came through for the deep storage of nuclear waste at a site somewhere in Scotland, I take it that there would be little site discretion by the time the planning stage was reached. Would the NPF include such a development as a national development?

Johann Lamont: The bill does not prescribe the type of development that may be included in a future national planning framework. We know what the current policy is in relation to nuclear waste. The Executive's position is well known: that there will not be new nuclear power stations until that matter is resolved. That will be decided beyond the gamut of the proposed planning legislation before us. The Executive will have to judge and reflect on any recommendations on dealing with nuclear waste.

Christine Grahame: I return to the subject of processing agreements, which I was dealing with last week. I asked Richard Hartland:

"Should they be in primary legislation?"

The view was that they should probably be covered in secondary legislation. Richard Hartland said:

"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."—[*Official Report, Communities Committee*, 22 March 2006; c 3317.]

First, do you agree with that? Secondly, if you agree with that, do you consider that processing agreements will stop there being a level playing field between the big developer, who has got the money, and the small developer, who wants to do something but cannot pay up?

Johann Lamont: First, we are not in favour of gimmicks. One thing that cannot be said about the bill is that it is gimmicky. It represents a genuine attempt to address issues across a range of interests in Scotland, whether it is local community organisations' experience of the appeals system, the grey areas that we experience as elected members, or the frustrations of developers in managing an inefficient process. The bill does not confer special benefits on any applicant. In my understanding, it recognises that in major applications it is beneficial to have an agreement that identifies the process of getting from point A to point Z. A timescale for the processing of major applications is eminently sensible rather than gimmicky.

Christine Grahame: To be fair to Richard Hartland, he did not say that the exercise was gimmicky; he said that it

"could be assumed to be gimmicky".—[*Official Report*, *Communities Committee*, 22 March 2006; c 3317.]

On my second point, do you disagree that the purpose of processing agreements is to allow a developer to pay more money to receive a better service? That was the key point.

Johann Lamont: We are in the business of providing a high-quality service. The whole drive of the bill is to improve efficiency and community involvement. If the bill is deemed to be gimmicky, I would like to know by whom. One of the key issues that we must assert is that the bill is a serious attempt at addressing the challenges of the planning system. If there are gimmicks in the bill, we will need to strip them out. My contention is that there are no gimmicks. The bill is an attempt to create a more efficient planning system, which has the trust of local communities. If you put a stamp of gimmick on to something, you devalue a serious process. I will ask Jim Mackinnon to come in on the practicalities of the processing agreement. We are clear that no one can buy favours in the planning system. That is not the intention of the planning system. However, it is in the interests of everybody—including local communities and developers—that the system is efficient and robust and that it involves people at an early stage. That is why we have made a commitment to a development plan-led system.

Jim Mackinnon: I wish to make two points. First, there is a major project close to the centre of

Edinburgh where the developer proposes a £100 million development. He has invested heavily in design, planning and transport consultants. The planning fee is probably in the order of £14,000 for a development of that scale. That does not seem to me to be a lot of money. It is not about buying permission. Secondly, I wish to emphasise the minister's point that processing agreements are not a gimmick. Major applications are important for Scotland. The Finance Committee's cross-cutting review of economic expenditure demonstrated clearly that those applications were not being processed as efficiently as they should be.

Processing agreements are about introducing a more managerial approach to processing major applications, but that is not at the expense of other parts of the planning service. You have to bear it in mind that we are also proposing a fundamental review of permitted development, to take the small-scale developments out of the system. That will allow professional planners to concentrate on applications other than the ones in which the value added is limited. I do not see this as a diminution of the service for the ordinary applicant—quite the reverse. The reforms are aimed at providing a consistent service for everyone.

Michaela Sullivan: The possible confusion about paying more to get a better service has arisen because the way in which planning fees are calculated is based on the concept of cost recovery. If you acknowledge that the major applications will have a longer developing process, in effect you acknowledge that the cost of that longer process will inevitably be higher. You cannot get away from that fact. The fee for that longer process will be higher, but it will still be based on the principle of cost recovery. It is not buying a better service; it is paying for the service that is being received.

Christine Grahame: At the risk of sounding like Jeremy Paxman, Richard Hartland said that the purpose of a processing agreement

"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."—[*Official Report*, *Communities Committee*, 22 March 2006; c 3317.]

Do you disagree with the way in which he put it?

Michaela Sullivan: I certainly disagree with the way in which he put it.

11:25

Meeting suspended.

11:32

On resuming—

The Convener: I reconvene the meeting. I noticed that the minister tried to do a runner during the break, but we managed to get her back for the second part of the meeting.

Cathie Craigie: I move on to pre-application consultations and predetermination hearings. We know that the Scottish Executive's main policy objective is to strengthen public participation in the planning system. We also know that developers and communities often have very different perspectives on what constitutes meaningful consultation. How can that divergence be bridged by pre-application consultation?

Johann Lamont: The different experiences of consultations and the assumptions that developers and local communities make add to the hostility and challenge that we all face in our local communities when we deal with difficult planning processes. I am keen that we get the message to developers that they must reflect on what local communities think of them. That is not to say that all developers are bad, but some communities' experience of some developers has been so poor that we need good developers to engage hard with the consultation agenda to address the situation caused by those developers who have a bad name. That will strengthen the developers' position in terms of the quality of their work. They have to see that their part of the arrangement is to engage genuinely rather than have to keep being pushed by people.

The importance of pre-application consultation should be recognised. Developers will have a statutory obligation to consult local communities before they make planning applications on a range of significant developments. Planning authorities will be able to decline to determine applications where pre-application consultation has not been carried out or is not adequate. We are giving force to pre-application consultation, but we really want to see active engagement by developers. That is where our planning advice note will be important. We reflected on that earlier when we talked about identifying appropriate methods of community consultation and examples of best practice.

We are aware that in a range of consultation initiatives communities believe that they had inadequate opportunity to participate. Underpinning that is our experience of the real world, which shows that the extent to which people say a consultation process has been effective depends on the extent to which they feel they have been listened to or agreed with, which is quite a different thing. We all have experience of people who will not be satisfied, no matter the outcome of a process or how effective it is, because they are so opposed to the proposal that they will not be happy with anything other than its refusal. Nevertheless, our research has shown that despite that natural human instinct, people recognise things that have worked and made them feel involved.

We want to build on good practice. We want the PAN to inform developers about the steps they can take to ensure that their consultation is valued. This is new territory for a lot of people. There are people who have loads of experience that we can feed in to the system. Our steering group on the new planning advice note tries to reflect that diversity.

Statements of consultation will require to be submitted with planning applications. If planning authorities believe that consultation has been inadequate, they will able to require further consultation to be undertaken. We need to have a more general sense of Cathie Craigie's point. There is a distinction between what people think they have to do and what it is in everyone's interests to do. Some of that will be addressed by our advice and the broader culture change that we have talked about.

Jim Mackinnon: We want to move away from the stereotypical situation where a developer submits an application and then consults the community on it to one where there is a proposal for an area and there is engagement with the community on how that proposal will evolve. As the minister says, there is a distinction between a situation where people do not want development per se—whether a housing development or something more controversial, such as a waste management development—and a situation where there is a proposal for housing and people are told that the access and density might be different and there is provision for affordable housing. There will be an audit trail from the community engaging with the initial ideas on a development to the actual planning application. The development industry will have to undergo a significant culture change if it is to mainstream consultations as opposed to seeing them as a bolt-on extra. The objective is to move from consulting communities on applications that have already been submitted to engaging with communities so that they can help to shape the proposals.

Cathie Craigie: I would welcome that, if it is the outcome of the legislation. However, we already have pre-application consultation on issues such as telecommunications masts. Communities have brought petitions on that to our attention, and we might speak about them later this morning. My experience—and local community experience—of that consultation is that it is not as effective as it should be. For example, a community might want a telecommunications mast to be moved to a green site a couple of hundred yards away from the proposed site, but the applicant might feel that it cannot take that proposal on board. Would you expect that to happen with pre-application consultations?

Johann Lamont: Telecommunications masts are a good example of the challenges that the bill throws up for everyone. There will be those who resist the notion of a mast being sited anywhere near them, and they are entitled to take that position. However, no matter how good the consultation or how good the developer and how well it has engaged with the local community, the stark fact remains that those people will not want a mast anywhere near them.

I have had very good—if patchy—experience with applications at a local level. We have identified alternative sites and developers have considered them. When other sites were not an option, they explained why not or they considered sharing. My experience is that when there was a willingness to engage in the process and when the challenges facing the developer in choosing another site were explained to people, the community took a different attitude than it would have taken to someone who just said, "This is it," and went no further. That does not get away from the fact that it is not always possible to resolve issues when people take the absolutist position that they do not want a telecommunications mast full stop.

Good practice is involved: we see that in the very fact that developers have offered different locations as a result of engaging with communities. People are not unreasonable; they will consider different locations. For example, Glasgow City Council's policy on telecommunications masts has changed. The council recognised that, as a consequence of its position that no masts should be sited on its properties or in its parks, telecommunications masts were being sited in private residential areas. The council realised that its policy gave it no capacity to resist applications. It has had to re-examine its position.

The situation is evolving. We recognise that there are limitations, but we expect developers to explore other options when they engage with local communities.

Cathie Craigie: There is also a need to share and roll out good practice wherever it is happening.

The committee heard evidence from COSLA and the Scottish Society of Directors of Planning. Both bodies identified the problems that planning authorities might face if they are unaware of the discussions that have taken place between a community and a developer as part of a pre-application consultation. Can we develop a formal role for planning authorities in pre-application consultation without compromising their impartiality?

Johann Lamont: Local authorities or planning authorities would have the consultation statement, which gives information on any undertakings that were given. The statement forms part of an

authority's material consideration of an application. We do not see councils having a formal role in pre-application consultations. Of course, planning authorities already have a role in holding pre-application discussions with developers—indeed, such discussions are common. Having a discussion with an officer is not the same as having a council decision, although I think that people recognise the difference between the two. On balance, our view is that it is not necessary for authorities to have a formal role in pre-application consultations. What is important is that planning authorities reflect on what is said in consultation statements.

Cathie Craigie: Do you believe that predetermination hearings will bring added value to the planning system? Many of the provisions on them have been left to secondary legislation. To which type of development will they apply?

Johann Lamont: Jim Mackinnon will come in on the second part of the question and give the detail.

We have indicated that predetermination hearings will be mandatory before decisions are taken on a range of applications, including applications for developments that are significantly contrary to the development plan, or that require an environmental impact assessment, or for large-scale bad-neighbour developments. We expect that approach to strengthen public participation in the decision-making process on a range of applications, because it will allow interested parties and objectors to make direct representations to planning authorities before applications are determined.

The statutory requirement for predetermination hearings will apply to planning applications in a number of categories. As I said, Jim Mackinnon will deal with that. Through a planning advice note we will provide best practice guidance on the procedural matters that authorities should address in their codes of conduct for hearings. That will improve the consistency of the hearing process throughout Scotland.

11:45

Jim Mackinnon: I cannot add much to what the minister said. The categories are very much as she explained: applications for developments that are significantly contrary to the development plan, that require an environmental impact assessment or that have been designated as large-scale bad neighbour.

We want to ensure that the process by which decisions are taken on such applications is transparent. From discussions that we have had with local authorities and community and environmental organisations, it is clear that an inconsistent approach to such developments is being taken throughout Scotland. Some local authorities allow people to speak, while others do not allow them to speak at all or allow them to speak for only a certain period of time. There is a range of practice throughout Scotland. We should focus on good practice in the many areas that we need to consider. For example, who should be invited to speak? How should they be invited? When should they be allowed to speak? Will meetings take place in the evening or during the day? How will the chair of a hearing conduct business? When will people be informed of decisions?

We have had initial discussions on the matter, and the SSDP has provided us with a paper on the issues that should be covered in secondary legislation or the code of practice. We simply want to ensure that anyone who objects to a planning application in Highland, East Lothian, Fife or wherever can expect their authority to be transparent and provide—I hope—a consistent service. Furthermore, our efforts to find the best way of conducting hearings will raise questions about the training of elected members to ensure that there is clear evidence of fairness and impartiality.

That is how we will ensure that decisions are returned locally. However, if questions remain about decisions on developments that are contrary to the development plan or on local authority interest cases, the applications can be submitted to the Executive. We will also be aware of and take into account the process of engagement in predetermination hearings.

Christine Grahame: This is a major area. I believe that the minister used the word "controversial" to describe it, and referred to public participation and direct representation in a transparent process. However, given that the third-party right of appeal has been dismissed, predetermination hearings must work and people must have faith in them. On the intention behind the bill's provisions, Malcolm Chisholm says in his letter:

"It is for local authorities to determine their own procedural rules for the conduct of hearings"

and

"to decide who has a right of attendance at hearings other than for the purpose of appearing before and being heard by the Planning Committee".

However, in the section entitled "Likely content of secondary legislation", despite highlighting, quite rightly

"Specification of the persons who will be entitled to attend a hearing in respect of any particular application for planning permission, for example persons or organisations who have already submitted written representations within the time allowed"

the minister refers to

"Discretion for planning authorities to decide that, where a number of persons have similar views on the application under consideration, one or more persons may make representations on behalf of others."

I am concerned that that conflicts with the stated aims of consistency, transparency and giving people their say. For example, a local authority in one part of Scotland might say, "Because the objectors have similar views, only two or three of them can speak, and they can have 10 minutes each," while another authority somewhere else might say, "There are 600 objectors to this application. I can't hear everyone, but I'll hear a different view because of the strength of feeling." Can you square that circle?

Johann Lamont: As we have said, the introduction of a statutory requirement for planning authorities to hold hearings and the provision of best practice guidance in the form of a planning advice note should ensure greater consistency in authorities' practice. Indeed, we have reflected that balance elsewhere. One theme that has emerged from today's meeting is the importance of the need for a balance between local authorities' rights and decision-making capacity, and their ability to act consistently and justify and be accountable for their decisions. Obviously, there will be some tension there, but I feel that we have struck the right balance. However, we—and I am sure local authorities—would resist any extra, bolt-on processes that local authorities would simply have to go through. The measures are purposeful and will support local authority decision making, and they should not be taken lightly and without regard to the good practice that we have identified.

Christine Grahame: With respect, minister, I did not allude to the guidance being a bolt-on. My question was about how to ensure consistency if planning authorities have discretion. If there are many objectors to a planning application, the local authority might use its discretion to take the view that, because the objectors have similar views, it will hear only two of them.

Johann Lamont: My point is that consistency and discretion must be managed together. If we simply wanted consistency, we would tell councils what to do, but that would not deal with the points that I discussed earlier with Scott Barrie about rural and urban differences or the different pressures that arise for authorities such as East Lothian Council and Glasgow City Council. We do not need to have just one or the other; we can accept the challenge of providing consistency and discretion. We are trying to strike a balance between what is decided at the centre and the extent of local authorities' discretion. I contend that the balance that we have achieved is right. We hope that the best practice guidance and the planning advice note will be reflected in planning authorities' actions—I did not suggest that you think they are bolt-ons. I am saying that, in our discussions with local authorities, we will be clear that the guidance should be seen as an integral part of the system and should therefore be taken seriously.

Jim Mackinnon: I want to build on the minister's point about the diversity of local authorities in Scotland. There are 32 different councils with planning powers, plus two national park authorities. In Clackmannanshire Council, every member is on the planning committee, but authorities such as the City of Edinburgh Council and Glasgow City Council have development control sub-committees. Argyll and Bute Council, Highland Council and Aberdeenshire Council operate area committees. Given those differences, it is important that we do not impose a single approach throughout Scotland. As the minister said, we are looking for a consistent approach, not central prescription.

Christine Grahame: I believe that predetermination hearings already take place in Scotland. What research has been done on the operation and impact of those hearings and on how members of the public perceive them to work?

Jim Mackinnon: I am not aware of our doing any systematic research on that, but we will work with stakeholders to consider how we can build on the successful examples in Highland Council, the City of Edinburgh Council and parts of Ayrshire. We need to consider the process from the local authorities' perspective and from the perspective of people who have engaged with it. As usual, we will work with local authorities, based on the information that they have provided us, but there will be opportunities for people to comment. To return to one of the minister's fundamental points, although the arrangements to hear a range of views might be adequate, people might not get the decision that they want—they may disagree with the fundamental decision.

Christine Grahame: That is understood and taken as read. As predetermination hearings operate in some areas, it might be useful to ask the public what they feel about them, as part of the consultation process.

Jim Mackinnon: I recall that, some time ago, we audited East Ayrshire Council's planning service, which included predetermination hearings. As part of that audit, we worked with stakeholders in local communities. On some aspects of the system, such as the time and place of hearings, the comments were favourable but, on other arrangements, such as the process that was to be followed, the comments were a bit less certain. We have anecdotal evidence on the hearings, but not systematic research.

Lynda Towers: In public local inquiries, there may be multiple objectors with similar but not identical objections. In such cases, the reporter tries to persuade parties with similar interests to combine their representation at the inquiry. The reporter's discretion is not the same as the discretion that the planning authorities will have, but it is similar. The system seems to work well, although I suspect that there are no statistics on that and that the evidence is anecdotal. However, the concept is not new.

Christine Grahame: My point is simply that it would be good for the Executive to consult members of the public who have been involved in predetermination hearings to see what they think.

Jim Mackinnon: Although we have not done any systematic research on that, we understand that City of Edinburgh Council and South Ayrshire Council have reviewed their hearings procedures and, because they think that there is much to commend them, they are proposing to continue with them, with minor adjustments. We know that individual local authorities have views on how their arrangements are working, but we at the centre have not conducted any systematic research on them. There is a body of expertise on which we can build in formulating a system that will be consistent throughout Scotland, but which will allow local authorities to exercise discretion on the basis of the circumstances in their areas.

Christine Grahame: Would it be useful to ask the City of Edinburgh Council and South Ayrshire Council to write to us with their views and to tell us what they found out from their communities?

Johann Lamont: I would hazard a guess that, given that the authorities reviewed their procedures in discussion with the people who used them, and that they decided to continue to use them, they were not told that they were rubbish.

The Convener: All local authorities were given the opportunity to respond to the contents of the bill as part of the committee's consideration. If they wrote to us, the information that they provided was supplied to committee members.

The bill proposes that local authorities will have responsibility for carrying out neighbour notification. Will the revision of fees ensure that local authorities can fully recover the costs of the new obligation that will be placed on them?

Johann Lamont: We are very keen on the measure, because it will give people confidence. We see local authorities as having a key role in carrying out neighbour notification in order to strengthen public confidence in the planning system and provide more effective public participation. More consistent and reliable neighbour notification of planning applications will help in that regard. We thought that the planning authority was best placed to conduct such notification.

COSLA and others have flagged up the implications for the local authority not just in managing the simple neighbour notifications—there might be diverse challenges for authorities in issuing notices—but in dealing with people who object to the fact that they did not receive a notification. We want to make the system work, but we acknowledge the challenges that local authorities will face. The neighbour notification working group and the planning finance working party have considered the issue. We want to flesh out the cost implications for local authorities. We are talking about an important measure for improving community consultation and involvement.

The Convener: All the evidence that the committee has heard from community groups, developers or local authorities is that they welcome the proposal and think that local authorities should have responsibility for neighbour notification, because that will build back into the system confidence that people have been advised of a planning application. COSLA's main concern is about funding. Are you confident that the planning finance working party will come up with a solution to ensure that local authorities will be able to recover the costs of issuing neighbour notifications and will not have to find the resources to fund that new financial burden?

Johann Lamont: There is an issue about increasing application fees to reflect the higher costs that planning authorities will incur in carrying out neighbour notifications. We acknowledge that there will be a cost and that the whole bill has implications in relation to fees, which will have to be factored in. Local authorities will have to acknowledge the importance of their planning authority role in their own budgets. They have to be engaged in considering that. We acknowledge that there will be higher costs and we are trying to flesh out exactly what they will be.

The Convener: I think that the local authorities' concern is that, although the cost of processing a straightforward, simple planning application is not great, a considerable number of neighbours might have to be notified. The one-off fee that the developer will pay might be quite small relative to the number of individuals and organisations that a local authority will have to contact. Local authorities think that that fact needs to be acknowledged.

12:00

Johann Lamont: I hope that such points and the implications for cost will be explored in discussions on the implications of the proposal. In

addition, local authorities should benefit from having an effective neighbour notification system, even in terms of a reduction in the volume of traffic that is generated by folk saying that they have heard about something that they were never told about themselves and asking why that has happened. Things that have been done poorly create unnecessary work for local authorities. If the system was more efficient, and if people were clear about proposals, the planning authority would benefit.

Mary Scanlon: COSLA raised a point, to which you alluded, about the sensitivity that would be caused by failure to notify those who live in a property of a proposal and the ability of individuals or groups to appeal to the local government ombudsman. Such failures might lead to spurious appeals. Of more concern is the possibility that they could lead to considerable delay. Are you concerned about that? Will the existing ability to appeal to the local government ombudsman, on the grounds of maladministration by a local authority, be retained?

Johann Lamont: I do not think that there are any proposals to reduce people's capacity to appeal to the local government ombudsman, which is an important protection. However, we recognise the implications of local authorities having responsibility. If a local authority is not fulfilling its responsibilities because it has not developed the procedures that would enable it to do so, that is very different from an authority not being able to fulfil its responsibilities because of inappropriate resources. That is what the planning finance working party and others are trying to address. It is not in our collective interests, nor is it in the interests of local authorities, to have a proposal without the means for local authorities to deliver it. We should also be mindful of the separate issue of authorities doing their business properly and being accountable for that in the normal way.

Scott Barrie: Will those who appeal a decision under the proposed schemes of delegation have confidence in the system, given that the same statutory body that made the initial decision will be responsible when it comes to the appeal?

Johann Lamont: We would not have proposed that if we did not think that that confidence could and should be retained. We should be able to place confidence in local authority decision making. The review will be done before an independent group of people who were not party to the original decision, and who we believe should be able to review that decision and either confirm or reverse it on the basis of the facts of the case. It is an important step to say that we want issues to be decided locally if at all possible and that, where there is a scheme of delegation, we want any appeals to be subject to local decisions.

Scott Barrie: Do you think that there might be further scope for deterioration in the relationship between elected members and planning officials under the scheme of delegation, compared with some of the tensions that exist at the moment?

Johann Lamont: The capacity of elected members and officials to rub along, even when they do not agree with each other, is evidenced at all levels of government, to be honest. People have different roles. We have to assert the primacy of elected members, who have a critical role in representing their communities and who are challenged with responsibility in so doing. Planning officials bring to their positions their expertise, professionalism and commitment to their local area. It is not to decry officials' professionalism for an elected member to disagree with them. That mature relationship can and should be developed. It is about recognising where authority lies and where the professional provision of information and advice lie. I do not think that our proposal compromises that any more or any differently in the case of elected members being given advice and choosing to act differently.

Scott Barrie: The process for each local authority setting up its scheme will involve the Scottish Executive before the scheme is finally agreed by the local authority. Is that the best approach? Is the approach intended to ensure consistency in decision making and in the way in which the different schemes throughout Scotland are set up?

Johann Lamont: Yes. It is important that people have confidence in the scheme of delegation. Given the need to balance the different layers of responsibility, authority and discretion, we felt that the approach that is outlined in the bill was the best way of ensuring that people would have confidence in the scheme of delegation that a planning authority proposes.

Patrick Harvie: Under the bill, planning permission duration will be reduced from five years to three years. I can see some arguments in favour of such a reduction in that, alongside other measures, it might help to provide greater certainty to communities that are affected by proposals. However, we have heard concerns from developers, who have pointed out that certain types of development take much longer than three years because of factors that are outwith their control and outwith the control of the local authority. How does the minister respond to that concern?

Johann Lamont: I recognise the member's acknowledgement of the significance of our approach. We want to limit uncertainty for communities by reducing to three years the time period within which a development that has been

granted planning permission must be implemented. Planning authorities will have discretion to extend or reduce the period within which developments must be begun. For developments that take longer than three years to progress, the bill provides for flexibility in the duration of planning consent in those circumstances.

Patrick Harvie: Does that flexibility give rise to the possibility of another round of conflict over whether discretion should be exercised in a specific case? How can that be resolved?

Johann Lamont: That is the challenge of this approach. The bill will reduce the duration of planning permission to decrease uncertainty, but all sides recognise that we still need flexibility. I do not think that that nullifies the decision to reduce the time period. As a general rule, the period will be three years, but we recognise that flexibility will be needed for exceptions. However, local authorities will be required to be transparent about why they use that flexibility.

The issue may be one of Christine Grahame's famous circles that cannot be squared, or squares that cannot be circled. The general message is that developers cannot just get planning permission and sit on it for a long time given the uncertainty that that creates. However, in addressing that, we had to include the caveat that the member has identified.

Patrick Harvie: I am happy to leave that square circular.

The Convener: The bill proposes new enhanced enforcement powers for local authorities, but COSLA pointed out to us last week that local authorities will need more resources to use those powers. Is the minister sure that local authorities will have sufficient resources to use the new enhanced powers?

Johann Lamont: My general point about resources—that we cannot ask people to do things and then not will the means for those things to be done—applies here as it does elsewhere. However, local authorities should reflect on the priority that they have given to planning and enforcement and on whether their planning budget has grown in line with the growth of the general local authority budget. I am keen that enforcement is recognised as a significant priority for local authorities. The resource challenges can be met through dialogue between the local authority and the Executive.

Furthermore, effective enforcement aims not just to deal with the person against whom enforcement action is taken, but to send a message to others who might choose to do the same. Lack of enforcement in respect of one development creates an atmosphere in which the planning system is undermined. A broader consequence of lack of enforcement is the cost to the community. Thus, high gains are to be had from proper enforcement. The issue is not a simple resource equation, but I recognise COSLA's point.

The Convener: COSLA suggested that the Executive might consider using fixed-penalty notices to deal with serial offenders—developers who, I am sure, are small in number but who constituency members know about—whose practices leave a lot to be desired and who regularly breach the terms of their planning consent. Did the Executive consider that measure and rule it out, or is it something to which you would be prepared to give further consideration?

Johann Lamont: As I said, enforcement is critical, not just in dealing with a problem on the ground but as a deterrent to that problem being replicated elsewhere. To me, enforcement is significant. It is not just about dealing with the individual; it is about sending out a message about the credibility of the planning authority and its conditions and its authority to tackle somebody who disregards what it says.

You will be aware that the bill contains provisions for those who breach planning controls to be prosecuted, with a maximum fine of £20,000. We are pursuing the matter with the Crown Office, and we know that it is relatively uncommon for enforcement cases to be passed to the procurator fiscal. There are two possible reasons for that: first, that cases are going to the procurator fiscal and not being tackled; secondly, that local authorities are deeming it not to be worth their while to pursue a case because they think they know what the consequence will be if it gets as far as the procurator fiscal. Discussion of that issue is on-going.

We recognise the fact that it is worth having not just the big option, but lighter-touch sanctions beyond that. As I said in my letter to you of 17 February, we are considering whether to introduce fixed-penalty notices at stage 2. Fixed penalties would be fines payable following failure to comply with an enforcement notice. They would offer an alternative to prosecution when that was thought by the planning authority to be disproportionate or impractical. They would need to be set at a level that was sufficient to act as a deterrent, while major breaches should be pursued through prosecution: the fines should not be a back-door route out of someone having the full force of the law against them. We are minded to consider fixed-penalty notices at stage 2, because we recognise the strong argument for local authorities having a range of options open to them, which would discourage developers from taking their chance with the law.

Euan Robson: We were grateful for a letter that explained a bit more about variations. Can you

elaborate on how you can develop a range of criteria against which a planning authority can establish whether a change is sufficiently substantial to require a new application? That is a sensitive area. One problem with the current planning system is that people think that they will get one thing and they get something else. Is that a matter for guidance or secondary legislation?

Johann Lamont: The measure regarding the variation of application enhances the transparency of planning decision making. It will ensure that any changes to planning applications are made public and that substantial changes will not go through without the submission of a new application. The bill sets out a framework around an applicant's ability to vary his or her application during its processing. He or she will have to agree any variation to the proposal with the planning authority. Secondary legislation will define the circumstances in which variation is permissible. If the planning authority thinks that a variation is so great that it will change the proposal substantially, it will not agree to it and a new application will have to be made for the revised proposal.

The bill requires planning authorities to place information relating to any variation that is made to an application in the register of applications, to ensure that each party is clear about which development proposal a decision is being made on. As a result of the provisions, it will be clear to all participants which set of drawings a decision has been made on.

Euan Robson: Okay, so we are talking about secondary legislation—regulations that will assist us further with this.

Michaela Sullivan: It will have to be defined but, for example, a change of use class could be an obvious trigger. If someone submitted a mixed-use application for a retail unit and flats, and a subsequent change included a pub and restaurant in one of the retail units, that would be an obvious trigger for a new application to be made. A pub and restaurant would belong to a different use class from that which had originally been applied for. It will be possible to establish some fairly obvious triggers around changes from one use class to another.

12:15

Euan Robson: What about density of development? What if an application was for 100 houses and then—hey presto—that suddenly became 150 houses?

Michaela Sullivan: That is where having up-to-date and effective development plans will be important. A development plan allocation should give an indication of the number of units that are acceptable on a site, and one would expect the application to accord with the development plan. A subsequent application for a development of massively increased density would probably be a reason for refusal rather than further negotiation.

Euan Robson: What if, after the application had been lodged, there was variation at a later stage in the process?

Michaela Sullivan: If the variation at the later stage in the process rendered the application subsequently out of line with the provision of the development plan, that would be a reason for refusal rather than a trigger for a new application.

The Convener: I ask Christine Grahame to make her question short, as time is marching on.

Christine Grahame: I will make it so short that you will hardly notice it, convener.

The minister said that variations would go into a register of applications—is that correct?

Johann Lamont: Yes.

Christine Grahame: Will that be sufficient to make the public aware that there has been a variation, in order that they can engage in the discussion about whether it is substantial or otherwise?

Johann Lamont: I defer to the professionals on the panel with regard to the details. I hope that community engagement and involvement will give people a better insight into what happens at different stages of the process, what they should be aware of and what they should look out for. I hope that they would be aware of the register and be able to see what was in it.

Michaela Sullivan: We could establish trigger points for renotification if a variation was considered substantial. We will probably have to consider that in more detail in the development of the secondary legislation.

The Convener: Are you satisfied with that, Ms Grahame?

Christine Grahame: Not really, but time presses. I put down a marker for that.

Mary Scanlon: Why does the bill give a right of appeal, in proposed new section 75B(1) of the Town and Country Planning (Scotland) Act 1997, against a planning authority that declines to amend a planning obligation agreement?

Johann Lamont: Developments evolve over time, and the planning obligations or agreements may lose their continued relevance. There needs to be a mechanism for securing changes to planning obligations; that mirrors the mechanisms that are in place for the amendment of conditions that are attached to a consent.

Jim Mackinnon: I could you a practical example of that.

Mary Scanlon: That would be helpful.

Jim Mackinnon: The proposed new section gives a right of appeal if the planning agreement requires the construction of an access road or the provision of money, for example, and the developer feels that he or she has discharged that obligation and would like that to be reflected in an up-to-date agreement but the planning authority refuses to do that. It is not about asking the planning authority to review something when it does not want to do that; it is about whether the developer has discharged an obligation under the terms of the agreement.

Mary Scanlon: Okay, I understand that. That is helpful.

The planning gain supplement will be dealt with tomorrow, but I make a brief mention of it here. Many witnesses—including those from COSLA, who appeared last week—and written submissions have raised serious concerns about the effect of the planning gain supplement on section 75 agreements. Basically, the supplement will drive a coach and horses through the bill. What is your contingency plan? Should the planning gain supplement go ahead—directed by Gordon Brown at Westminster—where will that leave the bill and the section 75 agreements in Scotland?

Johann Lamont: Consultation on the proposed planning gain supplement is on-going. I am sure that people will have contributed to that consultation and highlighted what they perceive as its implications for Scotland. One point that strikes me about the measure is that it runs with the grain of what we understand by planning gain. As we understand it, the idea is that planning developments should result in a broader community gain. The proposal is for a tax, but it is related to what we understand as planning gain. The regulation of section 75 agreements is a devolved matter. We will consider the emerging proposals closely to decide whether to take action to change the way in which section 75 agreements are managed.

Patrick Harvie: The idea of unilateral obligations seems odd, because an obligation is something that one party places on another party. I have asked various witnesses about that. Malcolm Chisholm's letter on secondary legislation talks about unilateral obligations, but also about unilateral undertakings, which may be a clearer term. However, an issue still arises about the value that will be placed on such undertakings in negotiations. Will the local authorities determine the value of a specific undertaking in negotiations? If we allow developers to give unilateral undertakings, they and communities will be unclear about the value that those undertakings have in negotiations. Local authorities might also be unclear and feel that they have less discretion to impose other conditions or decline an application.

Michaela Sullivan: Unilateral undertakings will be almost part of the appeals process. A point is sometimes reached at which a developer has made what it feels to be a reasonable offer to a local authority, perhaps on education contributions. In my experience, a local authority tried to get the developer that I worked for to pay for an entire school. The offer that we made was to pay enough to cover all the children whom we thought that our development would generate to go into the school. There comes a point at which negotiations reach stalemate, because the local authority seeks one measure, while the developer is prepared to offer another. At present, that leaves a difficulty in the inquiry procedure, because the reporter has before him just the two conflicting positions. The unilateral undertaking will allow the developer to put its offer to the local authority on the table. The reporter will then have information on which to base a judgment on whether it would be a reasonable section 75 contribution. If the reporter sides with the local authority, that could be a reason for refusal, but if he feels that the developer's offer is reasonable, he can find for the developer on the basis of what has been set out clearly.

Patrick Harvie: The measure seems to weaken the local authority's hand somewhat.

Jim Mackinnon: At present, in an appeal, unless the undertakings are in place at the inquiry—which happens rarely, if ever—if the reporter decides that planning permission should be granted, an intentions letter is issued, which says that he is minded to grant permission, but that the subject of the agreement should be negotiated with the planning authority. In the case of recalled appeals, the Scottish ministers can do that. The negotiation process can take months and months of endless wrangling. We propose that, if, for example, a developer wants to contribute to a school, the offer will be put before the inquiry so that the reporter can adjudicate reasonably and proportionately in the circumstances. The reporter can then ask the authority and the developer to finalise the agreement on the basis of a clear set of parameters, rather than say simply that planning permission is granted and that the two parties should go away and negotiate a section 75 agreement.

The aim of the measure is to ensure that issues are debated openly and that a view is reached. It does not place local authorities at an advantage; it provides a transparent approach for agreeing such things. Concerns have been expressed that many of the discussions and negotiations take place behind closed doors. Certainly, that is what communities have said. We want to see a process that is much more transparent and efficient.

Patrick Harvie: Are you saying that the measure will come into play only at the appeal stage?

Jim Mackinnon: Yes, although the applicant can offer to make a unilateral obligation, along with the submission of their application. By and large, the measure will be most effective at the appeal stage.

Patrick Harvie: Okay. I may return to the issue.

The Convener: The committee heard that the Executive consulted widely on the majority of proposals in the bill. However, you did not consult on good neighbour agreements. Why was that?

Johann Lamont: I guess that it was one of those good ideas that came too late for the consultation. In effect, stage 1 provides the opportunity for the issues to be explored fully. The omission was not wilful; we simply did not think of it in time.

The Convener: What are the benefits of good neighbour agreements?

Johann Lamont: We support good neighbour agreements as a way of promoting a stronger role for communities in monitoring the way in which developments are undertaken. They will give communities access to more information about a development and facilitate better communication between the parties in order to address issues of concern and avoid disputes.

The Convener: How will the agreements be enforced?

Johann Lamont: Good neighbour agreements provide another option for improving the operation of developments, because of the potential for greater community involvement. They can be wider in scope than planning obligations or conditions. For example, the provision of information to the public on site access would not necessarily fall within the scope of a section 75 agreement or condition.

We take the view that people want to work together. Under a good neighbour agreement, it is up to the agreeing parties to ensure that the terms of the agreement are respected. If a GNA is registered, the community body can enforce it against the applicant or subsequent owners and tenants of the development.

The Convener: How will you ensure that good neighbour agreements will add value to the process and be of benefit to the community and developer? Ultimately, who will be the arbiter in any dispute?

Johann Lamont: The point about a good neighbour agreement is that it is an agreement, which means that there is engagement between the parties. In our experience, some communities do not have that at the moment. People cannot be forced to enter into a GNA, but they go along with our drive to have more discussion and communication at every stage of the process. The good neighbour agreement fits into the different approach that we are taking to the question about what the role of the developer or community is.

A good neighbour agreement is different from other elements of the proposals on enforcement. The agreements are about giving reality and a name to a different way of approaching things. Breaches of agreements will not, therefore, be dealt with in the same way that other measures that attract penalties, such as fixed-penalty notices, are dealt with. The success of a good neighbour agreement will reflect the effectiveness of community engagement in the process and the willingness of the developer and community to come together at the table.

Jim Mackinnon: The convener asked why we did not include the good neighbour agreement in our initial consultation. As you know, we have done a lot of consultation on planning reform. The question of having such an agreement was raised in those consultations. We saw an area in which the community engagement and enforcement agendas that we are pursuing coalesced neatly, and that was a key driver to include the agreements in the bill. Ministers have spoken of the bill as a once-in-a-generation opportunity to reform the planning system. We felt that we had to take this step. Saying that we would introduce the measure in five years or so would not have been the right approach to take.

The good neighbour agreement is a legal agreement that can be enforced against successors in title, including through the courts. It is a very powerful mechanism.

The Convener: You say that the agreements can be enforced through the courts, but who will resource communities to do that? Often, when something goes wrong, communities have legal redress through the courts. However, if they do not have the finances, their ability to use it is severely hampered. Often, the communities that are most adversely affected are the poorest and most disadvantaged in the country. Even with the best will in the world, they cannot raise the money to mount a legal challenge.

12:30

Johann Lamont: That is why the purpose of the planning bill is to respect and engage with communities at the earliest stage and to put a far higher value on environmental justice. The weakest and quietest should not be more likely to become the repository of every development that nobody else wants. The challenge of the planning

system is to deal with the things that nobody wants but which everybody needs. The environmental justice thread of the legislation should be recognised, as it gives balance to the different voices in the community.

I recognise the convener's point. If we reach the stage at which communities are unable to take court action, that would reflect a failure of the system to engage those communities at an early enough stage for them to be able to influence matters. The environmental justice agenda will have been challenged by that. Rather than saying, "Take it to court and see what happens," we are trying to pull conflict out of the system and to ensure that developers engage with people at an early stage. There are lots of stages at which people can be involved before a case has to go to court, and we resource Planning Aid for Scotland to give people advice and support. However, we recognise what the convener said about that end point. The test of the legislation will be that things do not happen to the weakest, poorest communities because the system does not allow their voices to be heard as effectively as those of others.

The Convener: I agree with you about the stages at the beginning of the process, but I have a slight concern. Say we have a community that is willing to engage with the local authority and the developer, for example about a landfill site—I do not know why that springs to mind. That community is willing to contemplate such a facility coming to its area. The developer wants the site badly; the local authority wants it badly too, to fulfil its obligations. Everybody signs up to the plans and to a good neighbour agreement. What happens when the developer has done everything that it agreed to do? The developer ultimately wants to get its way, but the community is left with a good neighbour agreement, which is theoretically enforceable in court but financially unenforceable because the community cannot raise the money to take legal action against the developer.

Johann Lamont: I stand to be corrected, but I would have thought that the critical stage comes when the developer, the community and the planning authority discuss the application and decide that certain things will be insisted on as a consequence of the development. That is not a good neighbour agreement; it is conditions being put on the planning application. When people are round the table, they cannot agree to something that they have no intention of delivering later. We recognise the broader point that the convener has made in the past about the cumulative impact on communities; therefore, it should be recognised more broadly in the planning system that everyone has to have a bit of the pain, if you like.

Jim Mackinnon: That is right. One should not see planning conditions, section 75 agreements and good neighbour agreements as pointing in different directions. One would expect lorry movements, blasting or types of material deposited on a site to be properly reflected in planning conditions and under section 75. The reality is that most of those things would be enforced by the planning authority. As the minister said, there are arrangements to toughen enforcement in relation to things like joint working with the fiscals about the quality of evidence that is required and the consideration of fixed penalties in certain circumstances. Ultimately, there is the choice of going to court and getting a £20,000 fine, which is a sharp deterrent.

Christine Grahame: I have a couple of technical questions. First I might be wrong, but given that good neighbour agreements will be contractual, how will local authorities have any locus unless the agreements contain an enforcement regime? I cannot see how they will. The councillors who gave evidence last week thought that it would be good if local authorities could enforce the agreements, although they would need resources to do so.

Secondly, if we are talking about a simple contractual breach of contract, would it be possible to consider amending legal aid regulations to entitle communities to legal aid, subject to a test of whether their case has substance? Surely that would address the convener's point that communities usually do not have the wherewithal to bring such cases to court.

Johann Lamont: I do not see good neighbour agreements as being substitutes for planning conditions that will be enforced by local authorities.

Christine Grahame: I did not say that they would be.

Johann Lamont: One approach does not necessarily conflict with the other.

The approach in good neighbour agreements is closer to certain arrangements with regard to opencast mining. In that respect, some employers have engaged in bad practice; however, such practice has been followed by some good examples of what I believe is called compliance plus—about which Scott Barrie knows more than I do—which allows a positive agreement to be reached with a community to fund an enforcement officer, for example. Such an approach goes more with the grain of the bill's provisions rather than with the grain of enforceable planning conditions, in which the local authority would have a critical role.

Lynda Towers: Communities are groups of individuals who come together, so I am not sure

whether it would be appropriate to use legal aid regulations. My gut reaction is that a better approach would be to have something parallel to enforceable planning conditions that would give the local authority rights of enforcement within the planning system.

Christine Grahame: Would that address the fact that a local authority would have no locus under the current proposals?

Lynda Towers: Yes. In a sense, there would be parallel provisions.

Cathie Craigie: The minister is right to say that we are dealing with developments that we all need but that no one wants in their back yard.

Although I support the proposals on good neighbour agreements, I agree with the convener and other members that they are a bit weak on enforcement. In other parts of the planning process, local authorities can take out some sort of insurance or bond on developers who are unwilling or unable—more usually the latter, because the reasons are often financial—to address a matter that they had promised to address. Has the Executive considered any such mechanisms? After all, they seem to work.

Johann Lamont: As I have said, we do not expect communities to live off the back of good neighbour agreements alone. In addition, there will be a planning and enforcement regime that we are determined to make effective. It will not be the case that communities that cannot get developers to the table to formulate good neighbour agreements will have to accept whatever comes their way.

Jim Mackinnon: The use of performance bonds is not uncommon in planning in Scotland; indeed, a number of local authorities already use powers in that respect, particularly with regard to opencast coal and mineral mining.

The key point about a planning agreement is that it is not just an agreement between a planning authority and the person in question; it runs with the land and is enforceable against successors in title. However, performance bonds often take the form of private contracts in which one might agree to meet certain conditions with regard to access roads, open space or minerals, for example. They are usually employed as a means of restoring a site. If those conditions are not met, the planning authority can tap into resources to carry out that work itself.

Because performance bonds are used quite a lot in local authority areas such as Ayrshire and Lanarkshire—and, I suspect, in Fife and the Highlands—where major mineral operators are based, we did not feel the need to make additional provisions in that respect.

The Convener: Good neighbour agreements are not and should not be an alternative to planning conditions. However, from my interpretation of the proposals, the agreements will often cover issues such as the relationship between the developer and the community. Such issues often leave either a bad taste or a good taste in the mouth of the community. My concern is that if what is included in the good neighbour agreement is not lived up to, that will add to the resentment that could be felt in a community about what people had been led to believe they could expect from the developer. It is important to recognise that.

Johann Lamont: If good neighbour agreements are to be seen as reflecting a change of attitude, with developers and communities coming together, developers must understand how significant it would be if a developer were to enter such an agreement with no intention of upholding their side of the bargain. That is what I was talking about earlier when I mentioned developers rising to the challenge of the bill, and the new culture that that will bring about. In the case of opencast coal mining, the people who work the coal have understood how damaging it is to their reputation to be described as some communities have described them in the past when their experience has not been positive. I would have thought that the very fact that developers will enter good neighbour agreements reflects a change in attitude, but they will need to understand the consequences for their reputations of entering such agreements but not living up to them. Bad experience of one developer could drive people to believe that all developers are of a kind, and that that is the nature of the beast. We challenge developers to understand the consequences of not engaging seriously with that process, but I believe from the discussions that I have had that many of them understand those challenges.

The Convener: In my final question on good neighbour agreements, I would like to advise you of what the Law Society of Scotland told us. It is not necessarily a view that most members of the committee would agree with. It is the Law Society of Scotland's belief that communities do not have the wherewithal to engage in the process of establishing good neighbour agreements. I do not think that that is the case, because I have constituents who are more than capable of engaging actively in the process and of advocating well on behalf of their communities. Does the Executive share the Law Society of Scotland's concern that communities might not have the wherewithal to engage in that process? If so, how can you give them the ability to do so?

Johann Lamont: Through Planning Aid for Scotland, we have given communities advice and support in engaging with the process. As we have

already indicated, we want communities, through the proper community engagement and empowerment, to understand the system. I refute the Law Society of Scotland's suggestion that communities do not have the capacity to understand the system and that they require lawyers to speak on their behalf.

The Convener: I turn to advertising. The committee has heard concerns that the cost of advertising and the way in which development plans and planning applications are advertised in local papers are not conducive to people engaging with the planning process. What consideration has the Executive given to how we might ensure that people who need to know about development plans and planning applications are involved in the process at an early stage, and that we do not waste resources but instead target them at the right places?

Johann Lamont: There is a broader point to be made about the language that we use to describe what applications are and how accessible they are—I mean literally accessible, in terms of the format in which adverts appear as well as in terms of the language in which such adverts are couched. I know that, from a legal point of view, people have to be precise with the language that they use, so I can understand the extent to which people are thirled to that, but we must also recognise that such language can exclude people. Adverts can be put in local papers and people could be supported in understanding the significance of the advert so that they are happy to play a community advocate role—which sometimes happens—and to be used as a way of getting information out to people.

That is very much in tune with what we said about contemporary engagement and consultation; we have to do it in a way and using formats that we have not explored in the past, and we would be interested in exploring different options in the future. It is part of the tick-box mentality just to stick an advert in without thinking about whether people notice or understand it; that does not help anybody. It must be members' experience, as it is mine, that there can be reactions that create huge amounts of energy and concern, because people have not been told clearly enough or early enough what is actually happening. The rumour mill is a powerful place for generating activity. That is a waste, so we need to consider innovative ways of proceeding.

12:45

The Convener: Has consideration been given to abolishing the need for local authorities to advertise in the *Edinburgh Gazette*, which they claim no one apart from planners reads? People who should be involved in the planning process do not read that publication.

Jim Mackinnon: A few years ago, we issued a consultation paper entitled "Getting Involved in Planning", in which the idea of no longer advertising in the *Edinburgh Gazette* was mooted. We are happy to write to the committee to explain what we consulted on and what the reaction to the suggestion was, but I recall that we decided not to proceed with it because the *Edinburgh Gazette* is a useful source of information. People who do not happen to be represented locally have legal representatives who consult the publication. Tim Barraclough may have more to say on that.

Tim Barraclough: A new factor is the advent of e-planning and the role of electronic advertising. It has been suggested that electronic advertising should replace the current advertising requirements, but because of issues of equality and access to the internet, it is far too early to proceed with that suggestion. However, we will keep the matter under regular review to ensure that advertisements are in the proper formats, are accessible and meet the requirements of the bill.

The Convener: My final question is about the conditions that are attached to planning consents and whether people know that planning consent has been given for a development. I understand that, in the United States, outside sites housing developments and new landfill sites, huge billboards are placed that advise people about the planning consent and the conditions that are attached to it. Is the Executive willing to consider such an approach? People become aware of developments only when they see them happen. Making it easy for them to identify the conditions might be a positive contribution to the process.

Johann Lamont: That is an interesting and useful idea, especially in relation to enforcement. If people do not know what the planning conditions are, they cannot take the first step towards highlighting that a condition has not been complied with. Perhaps a billboard outside a building is a touch more accessible than the *Edinburgh Gazette*.

Jim Mackinnon: The practice that the convener described is also common in continental Europe. Billboards indicate the identity of the architect, the landscape architect and the engineer. It has been suggested to us that we may want to consider ensuring that copies of the approved plans are available for inspection, so that there is no dispute about the plan that is being built to. However, we must be careful, because we do not want to encourage people to wander around building sites, opencast coal sites or mineral operations when they are not suitably protected. The idea is worth exploring, but we must take such action in a way that does not compromise public safety.

Scott Barrie: In section 26(2) of the bill, proposed new section 160(1A)(b) of the Town and

Country Planning (Scotland) Act 1997 mentions

"trees, groups of trees or woodlands … of cultural or historical significance."

How do you propose to define "cultural or historical"?

Johann Lamont: We propose to define the phrase effectively—we would not dream of doing it in any other way. You will be happy to know that, subject to further discussion with stakeholders, we intend to define "cultural or historical significance" in guidance. The definition is likely to include examples, such as a tree's being the oldest surviving tree of a particular species in Scotland—I think that I have visited our oldest surviving tree—and of trees that are linked to the history or culture of an area, such as the Douglas firs in Perthshire.

Scott Barrie: Okay.

Johann Lamont: You are supposed to say that that is marvellous.

Mary Scanlon: This will be brief. Will you include ancient woodlands? In the Highlands, the question has arisen of ancient woodlands being used for developments that tend to relate more to what is below the ground than to what is above it. Will ancient woodlands be covered by tree preservation orders?

Johann Lamont: Yes. The bill includes provisions that allow tree preservation orders to be served for historical or cultural reasons, the meaning of which will be clarified in guidance. That will offer new protection for ancient woodlands or special trees, such as the oldest living example of a particular type. It is also our intention to introduce secondary legislation to make the Forestry Commission Scotland a statutory consultee for applications that involve more than 0.25 hectares of felling.

Ancient woodlands and trees in general also have great value in terms of biodiversity and natural heritage, but we believe that those are best protected through existing measures to protect biodiversity. The second draft of the Scottish forestry strategy is expected to include measures that will safeguard and enhance ancient and semi-natural woodlands as part of the overall approach to woodlands.

Mary Scanlon: Thank you for that. You will have made a man in Nethybridge very happy.

Johann Lamont: I have lived for this moment—it is the first time I have made anyone happy.

Scott Barrie: I just wish that you had made a man from Dunfermline happy. Highland Council has apparently expressed concerns about whether it will still be possible to promote a tree preservation order with an outer boundary without specifying individual trees in the woodland. Will that be possible?

Johann Lamont: We consulted on tree preservation orders, which will be in secondary legislation. It is clear from the responses that a plan that identifies trees is regarded as a key element of such orders. Several responses stressed that the plan should identify and reference specific individual trees, stating their species, and recording their age and condition. We envisage taking that approach, rather than just identifying an outer boundary.

Scott Barrie: Of the extra money for the bill, £2.7 million is identified in relation to tree preservation orders. What benefits will be provided by that quite large expenditure?

Johann Lamont: The money is not just for tree preservation orders. The tree officers will have not only that statutory function; they will have wider responsibilities, which we should all welcome, relating to management of open space, landscaping and other environmental issues. We have to consider not only cost but benefit. There will be benefits in savings as the system becomes easier to use. It will be for local authorities to determine the number of staff they need to carry out the range of functions, which might be different in different parts of Scotland.

Scott Barrie: On improvements, one of the major problems is not only preserving trees but getting rid of, or controlling, the nuisance hedges that exist in certain parts of Scotland. Would it be possible at stage 2 to introduce a scheme that would examine the problem?

Johann Lamont: In line with the extremely important work that has been done by Scott Barrie, we have taken the view that the issue of high hedges is a nuisance issue rather than a land-use planning issue and so has to be dealt with in those terms. People who have uncontrolled hedges or trees ought to be dealt with because they are creating a nuisance; the issue is not intrinsically to do with the tree itself. The issue could be addressed through Scott Barrie's bill on hedges, for which we have indicated our support.

Christine Grahame: I am imagining an antisocial behaviour order being slapped on a high hedge, but I will move on.

Minister, you are reaching the last lap of a marathon evidence session. How will the assessment process improve the planning process?

Johann Lamont: We are indeed reaching the last lap of a marathon. It might be worth mentioning that I have run a marathon. The feeling was not dissimilar to the feeling that I have at the moment, although when someone runs a marathon they do not usually run another one the next day.

Will you repeat the question?

Christine Grahame: How will assessment improve the planning system? As an addendum to that question, how will you engage with the public in the assessment process so that they know what is going on and are part of it?

Johann Lamont: Assessment of planning authorities is important. More rigorous audit and intervention are intended to stimulate authorities to make improvements to planning services a higher priority, to provide the basis for sharing good practice, to give ministers the opportunity to intervene where performance failure is persistent, and to improve public confidence in the system, which relates to the second part of the question. That reflects the balance that we seek to strike in our relationship with local authorities. There is a great deal to be done and we must work positively with local authorities. We must understand the challenges that they face and we must support them, but we must also recognise that it is reasonable to expect planning authorities throughout the country to meet certain standards and to be consistent.

Jim Mackinnon: Public confidence in the process is critical. For the past few years, we have run a system of non-statutory audits and a key part of that process has been engagement with stakeholders—including local architects and developers, but also community representatives—on what they think of the service that they get. Much of the debate with communities is on objections to individual planning applications. We need to take the debate out of that environment and to think about quality of service. Can people access planning officers? Is enough time allowed for committee hearings? Do people feel that they get adequate opportunities to participate in hearings? We want to build on that engagement.

Discussions about the planning service should not take place only between the Executive and planning authorities, but must involve other participants. Such discussions should consider the quality of local planning services and—in addition to specific issues on individual applications or development plans—the debate should cover the quality of service that is offered, access to that service and transparency.

Christine Grahame: Is there a role for Audit Scotland in that?

Tim Barraclough: We discussed the proposals with Audit Scotland, which has a great deal of expertise in methodologies for assessing performance. We will work with Audit Scotland to develop our methodologies. We think that there is a specific issue in respect of planning functions. There is a case for systematic focused effort to consider the functions of planning authorities in more depth and more regularly than would normally be the case with the reports that Audit Scotland produces under the best-value regime. We need something a bit more detailed than that. Audit Scotland is happy with that approach.

Christine Grahame: Are you suggesting that Audit Scotland could do that?

Tim Barraclough: No.

Christine Grahame: Who will do it?

Tim Barraclough: We are considering the options. Scottish ministers will be responsible for establishing who will undertake the audit programme. The options include the Scottish Executive Development Department, which already conducts the administrative, non-statutory audit function, and there may be other options. The bill gives the Scottish ministers the power to allocate the task to whomever they think appropriate.

Christine Grahame: In that case, who keeps the keeper? Who guards the guards? Who will audit the performance of the Scottish Executive, which is the ultimate planning authority?

Johann Lamont: The Scottish Executive is ultimately accountable to Parliament.

Christine Grahame: I knew that that was coming. It was a soft ball at the end.

Johann Lamont: As ever, we are mindful of the electorate, to whom we are all accountable. It is important for the Scottish Executive to engage with everyone in the planning system as opposed to sitting atop it and saying, "Now you sort it all out." That sense of the different levels of Government and communities working together to change the planning system sits strongly with the committee's discussions and the responses to the bill from people throughout Scotland. It is certainly reflected in the Executive's commitment to the aims of the bill.

Christine Grahame: Audit Scotland has a role in relation to the operation of the Executive—Audit Scotland might throw a less soft ball.

13:00

Johann Lamont: Audit Scotland certainly has a role in relation to other parts of the Scottish Executive's work.

Euan Robson: Why should ministers and not local authorities set the fees?

Johann Lamont: Your question returns us to a theme of our discussion. We want to revise the entire fee structure to reflect the new hierarchy, to ensure that authorities can cover a broad range of costs and to allow for higher fees for retrospective applications. However, we want to strike a balance. There should be consistency; it will be important for people to know that equivalent applications will be treated in much the same way throughout Scotland.

Euan Robson: I appreciate that, but given that local circumstances might be different, will you consider introducing fee bandwidths instead of having a one-size-fits-all approach, to allow some flexibility?

Johann Lamont: The key is consistency, although we acknowledge that there is diversity among local planning authorities. We anticipate a comprehensive review of the fee system in due course and all such proposals will be considered in the round. It would be interesting to hear the arguments for the approach that you describe and to consider how heavily those arguments weigh against the crucial need for consistent fees throughout Scotland.

Euan Robson: In effect, a bargain is being struck: if planning authorities are more effective, developers will swallow the larger fees. Given that research from Ove Arup and Partners, for example, suggests that local authorities underresource their planning departments, is there a danger that increased fees will simply go into the existing black hole? If that happens, what recourse will there be?

Johann Lamont: As is the case for all local government spending, there must be transparency. I have probably flagged this up already, but if a local authority indicates that it will give priority to its planning function, will it match that commitment with priorities in its budget and dialogue with the Executive about those priorities? There will be a review of planning fees and an improvement in the planning system should be part of that process. However, other factors will have to come into play and we are not talking simply about increased funds to manage a system that is not geared up to the new challenges. The new system will present challenges for everyone.

Euan Robson: What recourse will there be if a local authority does not perform?

Johann Lamont: We have indicated that our first step would be not to attack local authorities with sanctions, but to try to work with authorities to enable them to improve, because local authorities have a central understanding of their communities' local development needs. However, for major applications there will be processing agreements that set out a timetable for dealing with the application, and the fees for administration costs, and we have indicated that if that timetable is not met half the fee should be returned. We do not propose to extend that approach to other applications, although that is a small measure that could be taken. In the long term, the reaction to recommendations that emerge from the audit should give confidence to people who pay planning fees.

Patrick Harvie: It was suggested to the committee—albeit by just one source—that change-of-use planning permission should be a requirement for the development of houses in multiple occupation. I think that the matter came up during the passage of the Housing (Scotland) Bill. In another context it was suggested that second homes should be treated in the same way. Does the Executive have a view on that?

Johann Lamont: I do not want to comment on second homes, but I am much exercised by issues to do with HMOs. I do not think that the suggestion is the right one, but I will take advice on the matter. We are very interested in how local authorities view the role of the planning system as well as the licensing system in that context. The matter was flagged up during the passage of the Housing (Scotland) Bill. We recognise that some local authorities might need to identify through the planning system the number of HMOs in their areas, which is a different activity from saying whether an individual flat would pass HMO licensing. We are in dialogue with local authorities and others on that and we will report further on it at a later stage.

Patrick Harvie: Will you report on it before we reach stage 2 of the bill?

Jim Mackinnon: Very much so. The HMO issue was raised with us previously and we have provisionally organised a seminar on it for next month. The issue is restricted to a number of small areas, such as parts of Glasgow and Edinburgh. HMOs also have an impact in towns such as St Andrews that have a substantial student population. As the minister said, there is a lack of clarity about the relationship between planning and licensing and a lack of understanding about how the various systems operate. We will have a session on HMOs next month with a range of organisations and MSPs to discuss the issues and whether we need to legislate.

Patrick Harvie: It might be helpful if a written report of that seminar were provided.

Jim Mackinnon: I would be happy to do that.

Euan Robson: One of the difficulties in St Andrews and other places is that large numbers of HMOs are found in a single area, which can affect the long-term public provision of schools, for example. There are also other, different uses of public facilities that have implications. Those who are worried about the number of HMOs in a particular area want some balance, so that local services are not completely altered and local authority provision is not constrained in certain aspects.

Johann Lamont: We are aware of the particular challenges of HMOs in certain cities and towns, such as St Andrews, which have large universities sited in them. Some of the challenge can be explored through the planning system, but some of

it self-evidently cannot. We were keen to ensure through HMO licensing that properties are safe to live in. However, we recognise that there is a separate issue about what HMO licensing can do to the nature of a particular area. We are trying to explore with local authorities and others whether dealing with that is a matter for legislation. If it is, would the provisions sit most appropriately in this bill or would they sit better somewhere else? Could the same aim be achieved by simply observing good practice? Could it be done by different bits of local authorities—the planning bit and the licensing bit—talking to and engaging with each other? We seek to explore such questions because we recognise that the HMO issue is important for many people and that no easy solution to the problem has been provided so far.

Mary Scanlon: When the Crofting Reform etc (Scotland) Bill is considered there will be discussions about the pressures on crofting land for housing development. Can you clarify whether crofting community plans or general planning procedures take priority when a decision is made about the ultimate use of crofting land?

Johann Lamont: We live in interesting times because of that bill. Certainly, I have a strong commitment to crofting, which is important to some of our communities. The planning system and the crofting regime both regulate the use of rural land and they need to work together properly to deliver the best options for land use. We would need to consider whether the Crofters Commission should become a statutory consultee for development planning and management. Such issues would be dealt with in secondary legislation.

Mary Scanlon: In expecting the two planning areas to work together, would you expect any crofting community plan to be included in the local development plan so that it would have the same degree of consultation as other kinds of development in Scotland?

Johann Lamont: I am not going to stray into technical areas where I am not clear how bits fit together. I know that the issues to which you refer are current. However, we are clear that the Crofters Commission would have a role in reflecting a view on a development plan. I do not know whether any of my officials wants to add anything.

Jim Mackinnon: Not really. I think that the crofting plans go much wider than statutory development planning and will raise issues about land management and so forth. Certainly, the evidence that we have so far suggests that planning authorities and the Crofters Commission work reasonably closely. They are separate systems, but they need to dovetail and nest together as much as possible. We are not aware of big issues in this area, but if particular issues arise we are always interested to hear about them. As the minister said—

Mary Scanlon: I do not want to labour the point but, although I am sure you will agree that working relationships have been good in the past, the provisions of the Crofting Reform etc (Scotland) Bill increase the potential for housing development. People are concerned that housing development could come in by the back door, instead of going through the normal planning process.

Jim Mackinnon: There is no question of decisions on the planning merits of cases being affected by the Crofting Reform etc (Scotland) Bill. Applications for planning permission will have to be submitted and determined in the normal way.

Mary Scanlon: That is fine. Thank you.

Cathie Craigie: A number of petitions—particularly petitions on phone masts, terrestrial trunked radio masts and landfill sites—have argued that health should be a material planning consideration. Similarly, a petition on sewage sludge called for a health impact assessment to be included as part of the planning process. How can concerns about the impact on public health of particular types of development be taken into account as part of the planning process?

Johann Lamont: We are straying into very difficult ground—or interesting and challenging ground. As I think people are aware, health could, in principle, be a material planning consideration depending on the particular case. For cases in which potential impacts on health are acknowledged, other control procedures are already in place—through the legislation on building standards, pollution control, discharge consents, and health and safety, for example.

It is always important to ensure that the planning system takes full account of the views of health experts. Research into telecommunications masts is on-going and if the experts' advice changed after a review, the Executive would take that into account. That would apply to masts or to any other type of development. The challenge arises when the evidence says one thing but people still feel that there is an issue. Committee members must have experience of that in their areas—I certainly have. When the case for there being a health problem has been made, then of course health can be a material consideration; but when there is no evidence to back up people's fears, that is a different matter.

I reassure members that research into whether health risks attach to any type of development is constantly under review. The Executive wants to keep as up-to-date as possible on health advice.

Cathie Craigie: You are correct in suggesting that many people in communities have serious concerns about the health implications of phone and TETRA masts and landfill sites. Years ago, concerns were expressed about the environmental impacts of certain developments in and around our communities, and the Government decided to introduce environmental impact assessments to go along with planning applications. In a similar way, could all health-related facts not be gathered together in one report to the planning committee?

Johann Lamont: That is still a different matter from health fears that have not been backed up by evidence.

You mentioned environmental impact assessments. The Royal Commission on Environmental Pollution has recommended that human health issues be recognised more explicitly, which I think is what you are suggesting should happen. We acknowledge the concerns and will take them into account when we review our guidance on environmental impact assessments.

Christine Grahame: You suggested that you might have the Crofters Commission as one of the statutory consultees. Would health boards also have a role as consultees? In the list at present you have the Scottish Environment Protection Agency, Scottish Natural Heritage, enterprise companies, Scottish Water and the regional transport partnerships. I understand why they are on the list, but would health boards have a role too?

13:15

Johann Lamont: We have said that that list is not finished and set for ever. If a case can be made for particular organisations to be included, they will be considered. One of the things that is slightly different—I will take advice on it because I do not know if it applies to health boards—is that agencies of the Scottish Executive will not be dealt with in the same way. They have a different way of feeding in their contribution and of being consulted. I am not sure whether they would be captured in that way.

Cathie Craigie: Minister, what progress is being made on the review of the general permitted development order? Will the public be provided with the opportunity to be consulted on developments such as telecommunications masts that fall within the general permitted development order category?

Johann Lamont: That is important. People recognise that if there is a hierarchical system, things should be done at all levels of the hierarchy, but what should happen at the lower end of the hierarchy might not be as straightforward as we might initially think. Some things can be quite difficult for folk at a local level. In recent times, one of the big frustrations has been developments that have been captured by the general permitted development order.

Obviously we will want to consider the GPDO and ensure that it is up to date and fit for purpose. We might also want to consider how we might reduce the number of householder developments in the planning applications system.

The overall review of permitted development rights will take about two to three years to implement. Permitted development covers a wide range of developments and sectors from householders through local authority developments and so on. That is why the review has to be thorough.

Our review of existing permitted development rights is on-going at the moment and it is due to report by the end of this year. We will then have to develop proposals, and then consult internally and with stakeholders before the broader public consultation. Again, you can see that there will be a process.

A subsection of the current research is for considering householder developments and the scope for taking them out of the planning application system. The report on the householder developments aspect of the research is due in April and, if we were in a position to furnish information on the findings and recommendations contained in that report, we would make sure that we got it to the committee before the stage 1 debate.

The Convener: Thank you. Minister, I am sure that you will be relieved to know that that concludes our questions for you this morning. Thank you for your attendance and for your willingness to remain until we had covered all the issues that we wanted to cover.

That concludes today's meeting. The committee will reconvene tomorrow morning for phase two.

Meeting closed at 13:17.

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