

COMMUNITIES COMMITTEE

Wednesday 29 March 2006

Session 2

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CONTENTS

Wednesday 29 March 2006

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PLANNING ETC (SCOTLAND) BILL: STAGE 1	3411
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COMMUNITIES COMMITTEE

11th Meeting 2006, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

Euan Robson (Roxburgh and Berwickshire) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Christine Grahame (South of Scotland) (SNP)

*Patrick Harvie (Glasgow) (Green)

*John Home Robertson (East Lothian) (Lab)

Tricia Marwick (Mid Scotland and Fife) (SNP)

Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)

*Alex Johnstone (North East Scotland) (Con)

Christine May (Central Fife) (Lab)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Bill Aitken (Glasgow) (Con)

THE FOLLOWING GAVE EVIDENCE:

Tim Barraclough (Scottish Executive Development Department)

Johann Lamont (Deputy Minister for Communities)

Jim Mackinnon (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

Wednesday 29 March 2006

[THE CONVENER *opened the meeting at 10:01*]

Planning etc (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): I open the 11th meeting of the Communities Committee in 2006 and remind everyone present that mobile phones should be turned off.

We have received a number of apologies. Euan Robson and Mary Scanlon are unable to attend. Tricia Marwick is also unable to attend and has been replaced by her committee substitute, Sandra White. I welcome to the meeting Bill Aitken, who joins us as a visitor.

The first and only item on the agenda is our stage 1 consideration of the Planning etc (Scotland) Bill. I welcome the Deputy Minister for Communities, Johann Lamont, back to the committee's own version of "Groundhog Day". She is accompanied by Jim Mackinnon, chief planner; Michaela Sullivan, assistant chief planner; Tim Barraclough, head of planning policy and casework; and Lynda Towers, deputy solicitor in the office of the solicitor to the Scottish Executive.

Early in the process, Mr Mackinnon indicated that the bill was very much a package of measures and that if we wanted to remove a provision we would need to add in another, and vice versa—if we wanted to add in a provision, another would have to be removed. Does that rule still apply? Is the bill a complete package that must be seen as a whole?

The Deputy Minister for Communities (Johann Lamont): As a minister, I have always been willing to work with committees on any bill that we have introduced. Indeed, there is clear evidence that, as bills have gone through the system, the Executive has been willing to move on certain matters. In this case, my first instinct is, I think, the appropriate one for all parliamentarians, which is to listen carefully to suggestions that committee members and other members make about improving the legislation.

I will allow the chief planner to speak for himself on your first point. However, I believe that one of the bill's strengths is that it is a package that should be taken in the round. People with different perspectives on the matter might have been looking for different things from the bill and wanted to know whether it included or excluded certain

measures. For example, people who are concerned about community engagement and involvement might well have wanted a third-party right of appeal. However, I believe that although that does not form part of the bill, other elements of the system recognise the importance of community engagement. Similarly, although developers and businesspeople can be reassured by the bill's approach to issues such as certainty and time, they must also have regard to new responsibilities on involving and having respect for the communities in which they seek to establish developments.

The bill is very much a package that seeks to put in place a more efficient planning system that is more closely engaged with local communities. As it continues its passage, people must think about the balance that we have tried to achieve and consider the consequences that altering any element of the package might have on either community engagement or economic growth.

The Convener: Almost all the witnesses who have given evidence to the committee have indicated their desire to see a culture change in the planning system. Will such a culture change be possible when the legislation is brought in? Do all the stakeholders agree that they have a part to play in changing the culture within Scotland's planning system? Will the legislation provide the right framework for a culture change?

Johann Lamont: The bill is necessary for change to take place but is not all that is required to change the culture. It would be naive to think that we could change attitudes by legislation alone, although it is part of the process. I do not pretend that this is easy. We are in difficult circumstances. People have entrenched views about planning, based on their experiences. Some of those entrenched views were expressed during the consultation on the bill. We must move beyond that.

We must work to restore many fractured relationships and to tackle difficult attitudes. For example, at a local level, local authorities must recognise the importance of transparency and involving local communities. Equally, communities must seek to engage and developers must play their role. The Scottish Executive also has a crucial role to play in how it does its business and relates to other parts of the planning system. The legislation is important, but other factors go with it. Some culture change will come about because people decide that they must take the legislation on trust and move forward. However, as it beds in, there will be opportunities for people to recognise that a shift has taken place, which will affect attitudes.

We must address other practical issues, which are challenges for us all, in particular for people in

the planning profession. How can we make planning an interesting profession? How can we make it a place where people want to be? How can we make planning a positive environment in which to work as a result of planners not having lots of people, who operate on the assumption that they are at it, shouting and bawling at them on the phone?

Those points were made in evidence that was given to the committee. It struck me that it never occurred to me, as a young woman, to go into planning, yet it is one of the parts of my portfolio that I have found really interesting. It is interesting to see what you can do for local communities, how you can support real change in communities and how you can avoid some of the disastrous mistakes that have perhaps been made in the past. People who want to change the world should see planning as a natural place to be rather than as a place to avoid. There are some big questions.

Jim Mackinnon (Scottish Executive Development Department): There is no doubt that the starting point for the bill was the widespread perception that the planning system does not function as it should and that we need to legislate to deal with that. The legislative development process up to the introduction of the bill and the parliamentary process have raised the profile of planning. That has been tremendous in raising public awareness of planning as a process and as a product.

In the white paper, the Executive gave a commitment to do more to raise awareness of planning. That will be a big challenge for us once the shape of the new system has been established through the bill.

The key culture change is to put plans at the heart of the system. That represents an attempt to change the image of planning from a negative and regulatory activity to one that is visionary, enabling and proactive. A significant culture change is required, as is obvious from the fact that currently roughly two thirds of local authority resources go on development control or development management and one third goes on development planning.

There are certainly issues about resources, which we will no doubt come on to. However, planning is a local authority service and we have worked quite closely with the local authorities to identify the gaps and consider the options for plugging them.

Recruitment and retention are issues in local authorities generally and specifically in certain local authorities. For example, remote rural areas might well find it difficult to recruit and retain planners. We recognise that there are skills issues, which is why we are investing in the

planning development programme—we have just appointed the manager. The programme aims to give planners the skills, knowledge and competencies to enable them to face the challenges ahead.

Technology has a key part to play in culture change. The committee approved regulations to enable planning. With the support of all the planning authorities in Scotland, we are now putting forward a bid for that. It is not an information and communication technology project; it is a change management project.

We are about to do research to ask what the culture of planning is. It is easy for us to talk about the culture, but what is it? We are also having a series of informal discussions with our stakeholders about what they think are the challenges ahead in improving the planning culture.

The Executive has a role to play as an exemplar. Its policy development is efficient and inclusive and it struck me that most of the witnesses that have come before the committee have said that the process of planning reform has been open and consultative. That has been a hallmark of much of our work not just on planning reform but on individual policies. The committee has taken evidence on issues such as green belts and opencast coal mining. We also process casework very efficiently and that can be seen in the statistics.

We must acknowledge that there is an issue about effective regulation and its role in promoting public trust and confidence. We want a visionary and enabling system, but we also want breaches of planning control to be dealt with effectively because their effect on the lives of individuals and communities can be quite devastating.

We entirely agree that a culture change is not just an issue for the planning profession. The development industry also has big issues to face in early engagement with communities, in submitting the right information at the right time and in building according to approved plans.

The Convener: Thank you for that. You moved on to the next area that I was going to ask about, which is the concern that witnesses from the Convention of Scottish Local Authorities raised. All the witnesses who have given evidence to the committee have said that they have a role to play in culture change, and you said that you see the Executive as an exemplar of good practice. COSLA raised concerns that perhaps the Executive is, at times, slow to respond to its concerns about planning. It wants an assurance that the Executive will play its part in the culture. Is the Executive up for that?

Johann Lamont: We are always up for holding positive conversations with COSLA and others, and for playing our part. There is evidence—which I am sure Jim Mackinnon will be able to quote—of the quality of responses on casework and the meeting of targets and so on, and we can certainly provide the committee with evidence that the Executive seeks to recognise the importance of and to stick closely to targets.

There is perhaps a slightly different issue around how Executive departments relate to each other and their various planning responsibilities. That is an internal issue for the Executive. There is planning and there are the individual departments that might have to respond to planning applications. We must all ensure that that is done as speedily as possible.

My experience of the planning system is that it works very slowly. That is partly because the system has to be meticulous and everything must be done thoroughly. Ultimately, cases might have to go to court, so everything has to be done properly at every level.

We want an efficient and robust system without lethargy or the feeling that things can wait for another day. There must be a sense of energy about the system and part of that is about having a proper understanding of why things need to be moved on speedily and efficiently. The Executive has to be up for that if it is asking others to do the same.

John Home Robertson (East Lothian) (Lab): Now that the convener has dealt with the big picture of culture, I come back to the tedious nuts and bolts of sections and subsections. Several witnesses have made the comment that it is difficult to form a final view on many sections of the bill because the detail is being left to secondary legislation. How do you respond to that?

Johann Lamont: With any bill there is a need for secondary legislation; the bill establishes the framework for that. At this stage, we should be scrutinising the key principles of the bill. As we go through the parliamentary process, there will be a discussion about what is and is not in the bill. What people want is the reassurance that, as the secondary legislation goes through the Parliament, there will be appropriate scrutiny and consultation, and I am satisfied that that will be the case. We do not have to have everything in front of us right now for us to progress things later on. We have the balance right, although there are, as ever, anxieties about where the balance will lie in future. I am content that we have it right in this bill.

John Home Robertson: That is helpful. So I can take it that where secondary legislation will involve substantial policy issues, the Executive intends to consult further.

Johann Lamont: Yes. One key point is that we must test all the proposals against how people feel. Particularly with the present set of proposals, there is no point in imposing measures that people feel will not work. There is good evidence that, since the early stages of the white paper and as the bill has progressed, we have told people not to take it or leave it but that the proposals can evolve. That must apply to the secondary legislation, too, as some critical measures will be introduced through that.

10:15

John Home Robertson: That assurance is helpful.

Jim Mackinnon: I can give examples of that process. As well as working with local authorities on financial issues, we are working with them on issues such as neighbour notification. A lot of joint policy development work is being done with our stakeholders on a range of issues before the proposals become the subject of wider consultation. That will continue to be an important part of our work. Yesterday, Mr Home Robertson mentioned the review of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. The research that has been commissioned on that will be published in two parts during this year. People will have the opportunity to comment on it and we will then develop proposals for secondary legislation in association with our key stakeholders. Those will also be subject to public consultation before they come to the Parliament.

John Home Robertson: I welcome that. Moving on from secondary—

The Convener: Before you move on, Christine Grahame has a question.

Christine Grahame (South of Scotland) (SNP): I am not sure whether, technically, my question is for the minister or whether it is a point of information for the convener.

Minister, do you perceive it as a difficulty for a lead committee when all the meat and perhaps the challenges will come in the secondary legislation, but the committee does not take evidence on that? Does that create issues for the production of workable legislation by your Government?

Johann Lamont: That is a matter for the committee to judge. My view, as the committee's ex-convener, is that we must sustain our attention span on legislation past the first stage. The lead committee or other committees that have an interest in a piece of legislation need to maintain that beyond the royal assent stage. This committee has an awareness of individual planning policies—we have discussed green belt

and opencast coal mining policies with the committee. Some of the committee's rigorous work must focus beyond the initial primary legislation and on the other measures that make sense of it.

Christine Grahame: With your ex-convener's hat on, can you see that although we have a note on where the secondary legislation might go, if we do not have the secondary legislation before us, there is a difficulty in considering whether what we pass in the primary legislation will work when it is devolved down to the secondary legislation? I am becoming more aware of that huge issue for committees the longer that I am here—I do not mean in this room, speaking to you, but in the Parliament. As more and more secondary legislation comes through, there are difficulties for committees.

Johann Lamont: As I said yesterday, one challenge for ordinary elected members is to get tuned in to what is happening on the ground as a consequence of the legislation that we pass. We have a role in alerting the system if what we intended does not happen—we have all sorts of avenues for that. The committee needs a focus that is beyond the primary legislation. A long time ago, after the passage of the Housing (Scotland) Act 2001—some members are veterans of that—the Social Justice Committee was the first committee to use the phrase “post-legislative scrutiny”. Although that phrase does not trip off the tongue, the role is a critical one for committees. However, they should not be overwhelmed by that. There will always be the challenge of balancing one role with another. Committees talk to one another in all sorts of ways. Issues arise about tracking secondary legislation when it goes to other committees and ensuring that there is crossover. That is a challenge for the parliamentary authorities and the committees. It is for the Executive to ensure that what we do facilitates that scrutiny.

The Convener: John Home Robertson has a question.

Ms Sandra White (Glasgow) (SNP): On a point of order, convener. I indicated earlier that I had a question on secondary legislation. You nodded, so I thought that you were going to let me in. Am I allowed a question?

The Convener: I am afraid not. I allow members in at my discretion. I did not see you on this occasion.

Ms White: On another point of order, convener. This is supposed to be a democratic committee. We are considering a serious bill in which secondary legislation plays a big part. I would like to come in on other issues, so I want to know how the committee is going to be run. Will I be allowed to come in or not? This is not a proper way of chairing a committee, if you take my point.

The Convener: Ms White, it is not my practice not to allow members in. As I said, members get in at my discretion and, on this occasion, Christine Grahame was allowed in. We are moving on and John Home Robertson is next.

John Home Robertson: I will move from secondary legislation to primary legislation. The bill is big and, although I have long experience of dealing with legislation, I find it hard work to find my way through it. For example, section 2 consists of 30 proposed new sections of the Town and Country Planning (Scotland) Act 1997, which have to be read in the context of the relevant bits of that act. That is 25 pages of proposed legislation in one section. To be frank, it is almost impossible for us to get a handle on that, but it must be far more difficult for people outside the Parliament. Witnesses have put that point to us again and again. The bill is difficult to comprehend.

Mr Mackinnon gave us some supplementary evidence on 31 January, saying:

“consolidated versions of the legislation will be produced by several legal publishers”

in due course at a cost. We have discussed the matter before. It would be helpful if the bill could be presented in a format that is a bit more accessible to stakeholders and citizens. Have you given that any further thought?

Johann Lamont: I am aware of the issues that you have raised. If you, with your years of parliamentary experience, find it difficult to understand the bill, we must reflect on that, because reading legislation is not a skill that anyone is born with, as I have discovered to my cost.

In the longer term, as the chief planner has indicated, a consolidated version of the 1997 act will be available but, before the stage 1 debate in May, we hope to produce a consolidated version of the parts of the act that the bill amends substantially, and I hope that you will find that useful. The first stage is to consolidate the bit of the act that is being amended. There are obviously caveats around consolidating the whole of the planning legislation, but I hope that you will find the partial consolidation helpful to you in your deliberations.

John Home Robertson: That would certainly be a major step in the right direction and a useful precedent. When do you expect it to be available?

Johann Lamont: We hope to have it for you before the stage 1 debate in May. The accessibility of legislation is a broader issue that does not relate only to this bill or to this committee. There is a tension between a bill being up to the legal demands that are put on legislation and the Parliament's capacity to describe what is

happening in a bill, which are not necessarily the same thing. Scrutiny is a slightly separate matter, and I hope that you will find the partial consolidation that we will do before the stage 1 debate helpful.

John Home Robertson: That is very helpful. As far as I know, it has never been done at Westminster, so that initiative will certainly advance the principle of accessibility to citizens in Scotland and I am grateful for that.

Christine Grahame: Concerns have been raised about whether sections of the bill comply with the European convention on human rights. In particular, there are concerns about the fact that the bill removes the applicant's current right to a hearing and the fact that, under a planning authority's scheme of delegation, the right of appeal will be to the same statutory body that took the initial decision. Article 6.1 of the convention says that parties are

"entitled to a fair and public hearing".

I raised the matter earlier in stage 1 and I think that the officials' answer was that although particular bits of the process might not be ECHR compliant, the process as a whole protects the individual and will be ECHR compliant. It is a bit iffy to protect yourself by saying that although the courts might find that particular points in the process do not give people a fair hearing, the bill is nevertheless waterproof against a legal challenge because it is ECHR compliant overall. Do you really think that, when the provisions on review of a decision are tested in court, you will be successful in resisting an ECHR challenge?

Johann Lamont: We can only give you our considered opinion on that.

Christine Grahame: I welcome that at any time. I am sure that you always do.

Johann Lamont: We are at the mercy of what the courts decide. However, we believe that the bill is ECHR compliant; otherwise, it would not have been introduced and the Presiding Officer would not have signed it off. We believe that the bill is compatible with the ECHR and that any regulations made under it will comply with the ECHR.

Christine Grahame: That does not answer my question. You seemed to have conceded that some sections of the bill might not be ECHR compliant. If one section were challenged, would the fact that the bill itself was compliant make that challenge fail? I think that the challenge would succeed.

Johann Lamont: The test that the bill must pass is whether it is ECHR compliant. We believe that it is. As the Presiding Officer cleared the bill, it is clear that the parliamentary authorities also took that view.

Lynda Towers (Scottish Executive Legal and Parliamentary Services): Courts up to the European convention courts have considered the planning system in its current format. They did not consider each individual part of the system; they accepted that although some parts—including the reporters—are not ECHR compliant on their own, the protection of having an appeal to the court on a point of law makes the system ECHR compliant on an holistic view. Therefore, one must be careful to examine not an individual provision in the bill but the bill as a package and whether all the protections put together are sufficient to make the bill ECHR compliant. That is the assessment that has been made.

Christine Grahame: That is fine. That is now on the record, so somebody can use it in court some day.

The planning gain supplement is beginning to grow legs and wings. From the budget speech on 22 March, the thrust behind the supplement seems laudable. The Chancellor of the Exchequer said:

"To help finance necessary new infrastructure, our policy is that local communities should retain more of the planning gains that are generated in their area."—[*Official Report, House of Commons*, 22 March 2006; Vol 444, c 293.]

At our meeting the other week, when the planning gain supplement was proposed to our worthy and robust councillors, Councillor Dunn said:

"I am a bit young, but I am aware that there have been two or three attempts to introduce something similar over the past 40 years. From West Lothian Council's point of view ... the system that is proposed in the Westminster bill—would be a complete and utter nightmare."

Councillor Davies said:

"It would be disastrous for affordable housing policy."

Councillor Dunn also said:

"COSLA has tried to get more information on how it would work, but it is what could be called suitably vague."

When Mary Scanlon asked,

"Would I be right in saying that planning gain supplements would seriously reduce your negotiating hand?",

Councillor Dunn replied:

"We will not have one."—[*Official Report, Communities Committee*, 22 March 2006; c 3333-34.]

Those are powerful statements from men who deal with planning legislation at the coalface. We also have COSLA's response, which follows the same lines. At one point, it was said that the supplement would drive a coach and horses through the Planning etc (Scotland) Bill. It seems to take no account of planning law in Scotland and of section 75 agreements on planning gains. What are your concerns about the proposal?

Johann Lamont: I note what COSLA and the local authorities say. They are our partners in the planning system, so we must reflect on their contribution to the consultation. I am sure that the comments were not made lightly, so we must reflect on them.

However, we do not believe that the planning gain supplement proposals jeopardise the bill. The only relevant provisions for consideration in the bill are those on section 75 agreements, which will remain a devolved responsibility.

Christine Grahame: What is your Government's role in responding to the chancellor's proposal? Has it responded? Will the committee see that?

Johann Lamont: Officials have had a lot of contact and I understand that the Cabinet is developing its own approach to planning gain. For the purpose of the bill, we needed to be clear about the impact of the planning gain supplement proposals and the interface between the proposals, the consultation and the bill. As I said, we do not believe that the proposals jeopardise the bill in any way. We still recognise the importance of the potential for section 75 agreements locally.

10:30

Tim Barraclough (Scottish Executive Development Department): May I clarify a technical point? One of the things that emerged from our discussions with officials from the Treasury and the Office of the Deputy Prime Minister is that, in Scotland, liability for planning gain supplement will not be calculated until after section 75 agreements have been taken into account. That was perhaps not evident from the consultation paper, although it is mentioned in the paper. In response to the question about whether local authorities will have a negotiating hand, any section 75 agreements will be accounted for first, so one could use up one's entire liability for planning gain supplement through a section 75 agreement. Section 75 agreements are protected under the proposals on planning gain supplement.

However, we have to consider whether provisions similar to those that are being taken by the ODPM in respect of section 106 agreements there are appropriate in Scotland. As the minister said, that is a devolved matter and one for us to consider.

Christine Grahame: If the tax is 10 per cent of the value of the land and section 75 agreements take up 8 per cent of that, only 2 per cent will be remitted to the Treasury. Is that correct?

Tim Barraclough: Yes. That is the approach. The sum to be taxed is the difference between the

value before planning permission is granted and the value after planning permission is granted. That amount will be subject to tax at whatever percentage applies. However, it will be reduced by any section 75 agreements. If the amount to be taxed is £100,000 and there is a section 75 agreement worth £50,000, only the remaining £50,000 will be taxed.

Christine Grahame: I accept what you say, but were the councillors aware of that when they gave evidence?

Tim Barraclough: I do not know. It is clear from discussions that the point was not particularly well known. It came out when we were in discussions with Treasury officials at the end of January. We said, "A lot of people do not realise that." It is in the consultation paper, but it is in such a form that many people may not have noticed it. I cannot speak for the councillors.

Christine Grahame: Convener, rather than pursue the matter in oral evidence, it would be useful if we could have a more detailed written response on exactly how the system will operate.

Johann Lamont: Obviously, Westminster is consulting on planning gain supplement, but the system that Tim Barraclough outlined is our understanding. Section 75 conditions will remain with us and the mechanism that has been identified will be in place. If that is not clear from the *Official Report*, I am more than happy to confirm our understanding in writing.

Christine Grahame: Will you clarify whether the mechanism has been agreed with Westminster?

Johann Lamont: It is in the consultation paper.

Christine Grahame: But it has not been agreed yet.

Tim Barraclough: No. The consultation is ongoing.

Christine Grahame: Right. I know where I am.

Johann Lamont: The matter obviously weighs heavily with the committee and, as I have said before, we must reflect on what COSLA and individual local authorities say about the implications that they perceive. We regard section 75 agreements as an important aspect of the planning system for local authorities.

Christine Grahame: Do you concede that, if Westminster does not agree to the mechanism, we will have the difficulties that the councillors described so dramatically?

Johann Lamont: Our understanding is that section 75 agreements will have primacy. Is that the right word?

Tim Barraclough: Yes. That is the case under the proposals in the consultation paper.

Christine Grahame: But we will have to wait and see what happens.

Johann Lamont: Yes.

Scott Barrie (Dunfermline West) (Lab): How long will it take for the package of measures in the bill to be implemented fully? When will the nirvana of the modernised planning system be in place?

Johann Lamont: When we are all happily skipping around our communities without a care in the world.

Yesterday, Jim Mackinnon gave some detail on the timetable that he envisages. I am sure that he can repeat that, but the basic point is that, after the bill receives royal assent, we expect the process of drafting and consulting on regulations and guidance to take about two years. Thereafter, it will take several years for all planning authorities to produce the new development plans. Culture change will not happen overnight. We will have to keep a close eye on the legislation and test it to see whether it is effective.

Scott Barrie: That seems to be the key thing. It is not just about passing the new legislation, as you have already said this morning. It is also about ensuring that the current impetus is continued. Otherwise, people—being people—will get a bit disheartened and things will not quite happen. It is important that people understand that this will be a long haul, and that the bill will not produce a quick fix.

Johann Lamont: I certainly hope that there will not be some sort of retrenchment once the bill is passed. Whatever people think about the specific issues in the bill, we recognise the challenge both for communities in how they engage and for developers in how they go about their business. If there is retrenchment on either side, that would produce a difficulty. We are seeking a change in attitude and approach over time.

As elected members for our respective communities, we will always be alert to the challenges around individual developments. We recognise that it cannot just be a matter of reaching royal assent and then everybody going back to where they were before we started this process. That particularly applies to community engagement and empowerment. Some of our conversation yesterday was about how to do things in a new, contemporary way—that has to be tested and developed—rather than return to a tick-box mentality.

Jim Mackinnon: As the convener and other members have said, the bill is only part of the reform package. We are acutely aware of that. As the minister said, a significant programme of secondary legislation will follow, with new regulations on development planning and

development management, including permitted development; on the organisation of local review bodies; and on the conduct of inquiries. That is a substantial body of secondary legislation.

We are also seeking to advance in other areas that are important for the delivery of planning reform. We do not want things to disappear down a black hole. We have appointed a planning development manager, and £2 million is available to upskill planners over the next two years. That will involve a very active programme that is part of planning reform. The bids on efficient government and the e-enable planning service will be going in at the end of this month—in two days' time, in fact. That has the potential to unlock a great deal of what we want to do.

There are parts of the bill that we can commence without too much difficulty. For example, we can introduce some of the measures around enhanced scrutiny, which do not require secondary legislation. We are conscious of the need to advance on the broad thrust of planning reform. The bill is a milestone and a foundation, but there are other things that we want to do. We will have an active programme for delivering planning reform across the board.

Scott Barrie: In its evidence, the Law Society of Scotland expressed some concerns about a possible hiatus until NPF 2 is agreed. How do you plan to avoid that?

Johann Lamont: The chief planner made the point yesterday that, while the change is coming, it is business as usual. People should be updating their plans as we go along. It is not a question of people sitting and waiting until the secondary legislation is made. The bill is a reference point for people regarding their approach in the short term, but they cannot simply wait for everything to fall into place before they do anything. You can be reassured that there ought not to be such a hiatus. We will be working closely with local authorities to ensure that that does not happen.

Scott Barrie: Other members will probably return to the financial memorandum and the Finance Committee's response to it. I wish first to touch on the matter of transitional costs. How was the figure of £1.8 million arrived at? Is that sufficient to meet the transitional costs?

Johann Lamont: As I mentioned a number of times yesterday, the general point is that we need to work closely with all those involved in meeting the financial challenges. We need to bear in mind the extent of the costs and benefits of the new system, which we will have to weigh up in the round. We should also have regard to the priority that local authorities give to planning funding.

On the specific point about transitional costs, £1.8 million per annum has been identified for the

early years. That relates to 2008-09 and 2009-10. As you will know, that is the assumption that was made in the financial memorandum, and we do not see a need to depart from that estimate at this stage. However—and to state the obvious—the length of the transitional period will depend on the rate of implementation of the reform proposals by planning authorities. There will need to be flexibility and a recognition of that factor as the system progresses. The key element is dialogue on the real picture.

We do not want to characterise either the Executive or COSLA as having anything other than positive dialogue around any cost implications. It is not just a question of our saying, “You’re not getting any money” and COSLA’s saying, “But we need money.” We already have evidence of COSLA negotiating and engaging constructively around what the real costs are, and that is what we want to pursue.

Bill Aitken (Glasgow) (Con): One of the resource requirements that I foresee is the result of the worthwhile provision that local plans should be updated every five years. At the moment, some local authorities are working with plans that are about 20 years old. If local authorities are to meet the Executive’s not unreasonable targets, there will be a resource implication. What plans does the Executive have to ensure that local authorities are properly resourced to comply with that requirement?

Johann Lamont: We recognise the importance not just of saying to folk that they should have their plans up to date, but of providing the means for them to do that. Some of that is about understanding the real resource challenges; some of it is about asking hard questions about the priority that local authorities give to that within their planning work.

More generally, as I said yesterday, although local government funding has increased, the planning share of that funding has not necessarily grown in the same way. That is about local government priorities, which must be addressed by local authorities themselves. They must understand the importance of funding at the early stages of development planning to prevent what we talked about yesterday: the noise that arises in a system in which there is a lack of certainty about what is in a development plan and what is not; how old the plan is; what proposals there are; and so on. Funding at the early stages brings costs, but inefficient systems bring further costs. We are working with COSLA to address that. We cannot be in the business of saying, “You have to do this” if we think that it is not possible for local authorities to do that. Development plans, in particular, are critical to everything that follows, and local government must recognise the implications of that.

Jim Mackinnon: We have, effectively, had a plan-led system since the early 1990s. The figures that Mr Aitken quotes demonstrate that the plans are not being delivered, so we are including the requirement for a five-year update in the bill as part of the culture change. It is a legislative provision to drive culture change, to get local authorities to devote more resources to the preparation of development plans.

As I have crudely characterised it, roughly two thirds of the resource in planning departments goes to development control and the processing of planning applications, and one third of it goes to development planning. Authorities need to reconsider that. They also need to speculate to accumulate by setting out long-term visions for their areas that are perhaps more generous on issues such as land supply. There can then be a debate on the future of a community, as opposed to squabbles over individual sites that end up in the appeals process, which is terribly draining on local authority resources. That is part of the culture change.

Another thing has been very important for us in all this. When we consulted on the modernisation of development planning, people were looking for new processes and procedures. However, what came through as the critical factor in keeping development plans up to date was having a more managed approach—managing the initial preparation of development plans and recognising that, if the plans are to be updated every five years, arrangements for that must be put in place now. I recall the Strathclyde structure plan, which was a very large and unwieldy document; however, to the local authority’s credit, it updated the plan every two years. If we can promote that management style and that culture, which sees public engagement as part of the planning process and not a bolt-on, local authorities will manage the process efficiently and inclusively. There is no doubt that that is a challenge, but there is every sign that the planning community is up for that. Everyone believes that relevant, up-to-date development plans are the key to a modernised planning system.

Scott Barrie: On the issue of resources, it is not clear to me yet whether there is necessarily a shortage of planners, although there is certainly a problem with the recruitment and retention of planners in local authority planning. What discussions have there been with both the planning schools to ensure that we have a sufficient number of skilled planners to fuel the system? If we do not deal with the problem of recruitment and retention in local authority planning, many of our ambitions for a new planning system will fall by the wayside because there will not be enough people with the qualifications to carry out the work. What

discussions have you had with other parts of the Executive, such as the Enterprise, Transport and Lifelong Learning Department, to ensure that we are attracting enough people into the profession and turning out people of sufficient quality?

10:45

Johann Lamont: There is an issue about retention, but the professional planners at the table will be able to comment on that. Given what they have to do every day, some planners must feel that they are between a rock and a very hard place. However, the changes that the legislation will make to the planning system will change the nature of their job and, as Jim Mackinnon has indicated, work on the planning development budget has taken into account professional education and training to allow planning staff to be more effective at their job and, indeed, to make the job better.

Discussions are taking place with the Scottish planning schools, local authorities, employers and the Royal Town Planning Institute as the planning professional body on what needs to be done to attract more young people into the profession. When I had the privilege of attending the RTPI conference, I was struck by the gap between what one's image of a planner might be—and I say that with all due respect to the planners at the table—and those planners' energetic commitment to addressing the big issues instead of simply taking a lines-on-the-map approach. I am sure that planning professionals and the professional bodies have many views on how to take forward these matters. However, it is easy to express views about something; the challenge will be how we deliver it.

Obviously, the Executive will need to discuss how people are attracted to different professions. Although the current policy is to address market shortages through terms and conditions of employment rather than through student support, that is not fixed for ever and a day and, in any case, we should not close off any options.

It is easier for me to state the problem than to identify solutions. However, we will work our way through the matter with the professional bodies.

Jim Mackinnon: The issue is very important, although I should point out that after auditing a number of local authority planning departments, we found that, despite the general shortage of planners, some local authorities are quite well staffed. The undoubted problems with recruitment and retention in some local authorities might be a matter of geography—after all, people might not want to work outwith the central belt—lifestyle choices or the image of local government, which is something that we need to consider.

We are well plugged into the various networks. For example, we meet regularly with the Scottish Society of Directors of Planning and the Scottish local authorities' heads of planning. I am a member of the Scottish education planning forum and Michaela Sullivan is an external examiner at Heriot-Watt University.

There is no doubt that the closure of the planning school at the University of Strathclyde was a blow to planning education in the west of Scotland. However, a very active one-year postgraduate course at Heriot-Watt is attracting students and the school of urban studies at Glasgow University is seeking to promote courses for planners.

Planning is generally perceived to be an aging profession, and I plead guilty to that particular charge. However, last week, I was privileged to attend the conference of Scottish young planners and the energy, talent and commitment of the 200 delegates was almost tangible.

In our discussions with local authorities, some have wondered whether the problem is not so much that we are short of planners but that we are short of support. For example, technical staff could assume more responsibility for dealing with minor applications. As a head of a local development management team said to me, "Why should I spend two hours on the phone trying to organise a meeting with six people?" It might also be a matter of how planners are deployed, and we are taking a closer look at how planning can be resourced without necessarily having to increase the number of planners.

Moreover, it might be better for tasks such as engaging with the community to be carried out by people with specific negotiation, mediation and communication skills rather than by planners with planning qualifications. As members can see, in parallel with our work on the bill, we are trying to unpack its measures and to chart a realistic way forward that will deliver what we all want.

Ms White: Scott Barrie and others have mentioned the financial package, to which the Finance Committee's report relates. There are significant concerns about whether enough money is being provided to implement the bill's measures, in particular the new planning framework and the cost of consultation. When the Finance Committee asked about funding, the Executive replied:

"We said in the financial memorandum that the estimates are initial estimates that carry significant uncertainty. The information was the best we could provide at the time, unfortunately."—[*Official Report, Finance Committee*, 28 February 2006; c 3458.]

Why was more detailed consultation not carried out to assess the resource requirements?

Johann Lamont: Detailed consultation was carried out and the estimates that are in the

financial memorandum are the result of that process. It would have been foolish for us to say that we would do no further work on those estimates, given the process that exists for people to highlight the challenges that we face on the financial package. I have made the point before that the planning reforms will liberate money and get rid of the noise in the system that is created by inefficiencies. The priority that local authorities attach to planning is also an issue. The financial memorandum simply reflects the existing financial challenges.

We said that we would be happy to supplement the information that the financial memorandum provides with the assessment of planning authorities' current and future requirements that the planning finance working party is conducting. We expect to be in a position to make the revised estimates available before the stage 1 debate, in line with the requests that the Finance Committee made.

Ms White: You are saying that another consultation is being conducted.

Johann Lamont: I am saying that more work is being done, which is entirely sensible if we want to ensure that the bill works. We must have every means available to make it work. People have raised a range of issues, to which we must respond appropriately. One of those issues is the financial package.

Ms White: Are you saying that if you find that the costs are greater than was first estimated, you will revise the financial memorandum before the stage 1 debate?

Johann Lamont: I have said that we will be happy to supplement the information that is provided in the financial memorandum with the results of the work of the planning finance working party before the stage 1 debate.

Ms White: If it is found that the costs have gone up, will you revise the financial memorandum?

Johann Lamont: I think that I have made that clear.

Ms White: I just wanted to clarify that.

You mentioned the lack of planners. Jim Mackinnon has explained that we might not need more planners because the work could be done by other people. COSLA has raised the staffing implications not just of the bill, but of the Environmental Assessment (Scotland) Act 2005, which it argues could slow the whole planning system down, even if we had more planners. Have you considered that issue?

Johann Lamont: Which issue?

Ms White: The one that I have just mentioned.

Johann Lamont: What was it?

Ms White: Perhaps you did not hear me. COSLA has said that even if we had more planners, the additional work for local authorities that will be generated by the planning bill and the requirement to produce strategic environmental assessments could slow down the whole planning process. Has the Executive thought about that? We know that there is a shortage of planners and Jim Mackinnon has said that there could be other staffing implications. COSLA is saying that the planning process could be slowed down, even if extra workers were provided.

Johann Lamont: The purpose of our proposals is to produce more efficiency and robustness, which will benefit every bit of the system. We should not substitute rigour with speed because those are two different things.

Planning authorities already have some responsibilities that will remain challenges regardless of whether the bill is passed. You mentioned strategic environmental assessment, but that is a requirement that applies to existing development plans, so such work should already be being done. That is not to gainsay the importance of meeting the financial challenges that the bill sets us, on which we are working with COSLA, as I have said. I do not accept that the bill brings only costs. Efficiencies can also be identified. We certainly have no intention of closing down the dialogue with COSLA and others on that.

Jim Mackinnon: I will pick up on the point that the deputy minister made about reduced burdens. It is important to understand that aspect, as well as the point that the convener raised about the package of measures in the bill. Many aspects of the bill should reduce the requirements on local authorities. We are proposing to remove the requirement for two tiers of development plans everywhere in Scotland so that remote rural areas will not have to prepare both a structure plan and local plan. There will clearly be efficiency savings in that.

We are examining the whole area of permitted development. We are posing the fundamental question whether all the things that currently go through the planning system need to go through it. There is a consensus that they do not, but we then have to work out the detail of how to proceed. Together with colleagues in Historic Scotland, we are also examining the overlap between planning permission and listed-building consent. Essentially, those are parallel processes. Could they be simplified or streamlined? Essentially, the same issues are examined by the same authority, with the same factors being taken into account. Those are important aspects of the bill. The new arrangements for appeals will reduce the burden on local authorities. We are moving to review

planning authorities' decisions, restricting the scope for appellants to introduce new material. That means that proposals would be considered as if they were completely new and fresh. There are significant benefits in that.

It is not just about legislation. There is also an issue of culture change. It has been clear from our audits that there are things that can be done differently. People might want to draw up a development plan within a year, but what can they actually do over a year, as opposed to saying that the plan will take as long as it will take? There are issues around the length of reports. Is it always helpful to have very long reports? There are issues around the use of planning conditions. That goes back to some of the points that the convener raised yesterday. There might be 50 planning conditions but, if they are not enforced, it would be better to have five rigorously enforced conditions instead. That is important for maintaining the public's trust.

There are elements of the bill that will help reduce the burden on local authorities. Of that there is no doubt. There are also elements of culture change that will be really important in driving efficiencies. Finally, I return to the point that I made to Bill Aitken about development planning: better management of the process is often the central issue.

Ms White: I do not disagree with you about streamlining. You have mentioned various areas where there has perhaps been duplication. You are saying that financial savings can be made, and that is why you have made your recommendations. You must also consider the cost to local authorities of neighbour notification. That is not in place now, but it will be there when—

The Convener: Ms White, you were not at the committee meeting yesterday, and we have already covered—

Ms White: Excuse me, convener. I am replying to the chief planner. This is about finance—

The Convener: Excuse me, Ms White. I am pointing out that you did not attend the committee meeting yesterday, when the issue of neighbour notification and the cost of—

Ms White: This is not to do with neighbour notification.

The Convener: Those issues were covered yesterday. I would therefore ask that you relate your questions to matters that we are discussing this morning. I ask you to keep your questions short to allow all members of the committee an appropriate opportunity to question the minister.

Ms White: Thank you. I am glad that you let all members question the minister. I am replying to Mr Mackinnon's answers regarding—

The Convener: I am asking you to ask a question, Ms White.

Ms White: This relates to financial cost. COSLA has said that there will be financial costs arising from neighbour notification and consultation. I am asking you, minister, and Mr Mackinnon, whether you are saying that those costs can be met by streamlining where there is existing duplication, whereas the Finance Committee has suggested that more money will be required for the bill.

Johann Lamont: You are creating a false division. We are working closely with COSLA and other bodies to identify what further work needs to be done with respect to the financial memorandum. There is no doubt, as we discussed yesterday, that neighbour notification brings with it certain costs. It also brings benefits, because there will be less noise in the system caused by people not being told about things and getting upset about that, with too much information coming through the rumour mill and so on. We take seriously the Finance Committee's points not just about the practicalities of issuing neighbour notifications but about the liabilities and consequences arising from people's complaints.

It is not the case that we are on one side of the battlefield, with COSLA on the other. We have a shared commitment to ensuring that the planning proposals go through and that the means to deliver them will be provided. We are not simply going to settle for ticking a box marked "new planning legislation" and then moving on to something else. These proposals are significant for our communities, so we view COSLA as partners. That is why we have indicated our willingness to provide supplementary evidence or information on the financial memorandum in time for the stage 1 debate.

11:00

Patrick Harvie (Glasgow) (Green): A number of members have questions on public involvement and third-party appeals. Rather than get into an argument about third-party right of appeal up front, I would like to begin with some more general questions about public involvement. What plans does the Executive have to increase the community's capacity to engage with the planning system? It is said that the intention is to increase up-front engagement. Communities need skills, expertise and confidence to engage in that way. How does the Executive intend to help to establish those skills and that confidence?

Johann Lamont: I imagine that other members' communities are similar to mine. Those communities do not have a deficit in skills, expertise and confidence, although perhaps that is unevenly expressed across the country. There is a

question of equity and equal access to the planning system, which is a different challenge for us. Environmental justice is a critical issue. Skills, expertise and confidence give communities the capacity to engage with a system that is difficult, obscure and hard to get a handle on. The proposals in the bill try to draw much clearer lines, to create more transparency and to facilitate early engagement by providing more information on development plans and so on at an earlier stage, so that people can know what the key proposals are.

Part of the solution is to provide access to information. Another part is to have a system that is more easily understood, which the bill will help to develop. We must also understand the challenges to engagement and consultation—yesterday we discussed the way in which we consult. Our work around the planning advice note on community engagement and the connections with other people's work and expertise will be critical. I am sure that Jim Mackinnon will be able to highlight some of the critical things that we are doing in relation to Planning Aid for Scotland. That bit of the system must be got right. We must let people know how the system works, how to engage with it and what the key stages for involvement are. As we discussed yesterday, I think that all members have a critical role to play in their local communities, by supporting people with information and advice as they require it. There are basic, simple steps that can be taken around community engagement and that are in line with other aspects of what we are doing to promote community involvement, in the community planning system and elsewhere.

Patrick Harvie: You mentioned the feeling that there is a lack of equity in the level of involvement that people have with the planning system. We all recognise that a small number of people will continually and enthusiastically engage—perhaps not always constructively—with the system. The objective should be to widen that pool and to ensure that more people feel able to engage positively and constructively with it. I am unsure what you are saying about the new measures that the Executive wants taken to ensure that people who have not previously engaged with the system feel that they have a reason to do so.

Johann Lamont: Including community engagement and involvement in the planning package is critical. It is significant that developers will be challenged to produce a consultation statement and to report on how they have consulted. Yesterday we discussed the different steps and stages of that process, which sets the scene for the challenge of bringing about proper community engagement. Community engagement will no longer be just an option—developers will have to establish that it has happened.

You are right to make the point that some folk are resistant to all change and will object to anything. I get annoyed that some people try to characterise all developers as cowboys and all objectors as nimbys, but the system must recognise that both phenomena exist and deal with that. I am sure that if people are able to engage early, there will be less frustration in local communities and the instinct to resist and repel all boarders can be challenged and shifted.

Patrick Harvie: Do you agree that in addition to having information about how the system works and opportunities to make their voices heard, people need incentives to motivate them to get involved? That enables them to feel that they have power in the system and that their views will not merely be heard, acknowledged and then ignored.

Johann Lamont: That is how the situation is often characterised. People say, "Yes, you consulted us, but it made no difference." Are we therefore saying that the test of consultation is whether people agree with the outcome? That is a difficult test, because people have different views. Members will know that their feeling about a consultation is affected by the impact that they have had. A reaction to that is to think that there is no point in consulting because, if they do not agree with the outcome, people will be appalled and will have a negative mindset.

I work on the assumption that people have much to say about their community and have a great deal of expertise. They can play a positive role in shaping their community. That is certainly my view in other policy areas such as social policy, delivering health care, delivering care for people with learning disabilities, delivering action on violence against women and so on. If you talk to the people who know most about the community and you have the confidence to allow your policy to be shaped by what they say, you will produce a better policy.

My instinct is to value what local communities say and to respect their views. That is why I have been convinced by the argument for development plans. At that stage the process is less adversarial, as it is less about one particular thing happening in one geographical area or to one household; it is about what people want their community to look like. People can be asked general questions. Do you want affordable housing? Are we agreed that we want houses for our young people to live in so that they do not have to move away? That is the first test for a community. In some communities there will not even be agreement on that, because folk will say that they like the community the way that it is. They will say, "I understand that there are pressures and I understand that I have created pressures by staying here, but I do not want other

people to stay here.” Alternatively, people might say, “The nature of this place is that it is a village, so I do not want a town bolted on to it.”

The development plan process allows a discussion to take place. It enables policy to be shaped and it enables people to feel that they are in control and have been empowered because, as the local authority moves forward, it engages in the serious business of considering what the community should look like. The contention is that that can provide comfort when it comes to the difficult challenges around individual proposals on individual sites.

Jim Mackinnon: Our starting point is that more rights are guaranteed for the public by statute in planning than in any other area of public policy. A key part of the modernising agenda is that we engage—not consult, but engage—with communities early in the process and that we broaden the basis of the engagement. Those are big challenges.

A number of the bill’s measures on development planning are intended to achieve that aim. The development plan scheme will require a statement of community engagement and the notification of major local plan proposals to owners and neighbours. The reporter will assess the quality of the engagement. The inquiries themselves will be less adversarial and more informal, but if there is a need for an adversarial approach to be taken that opportunity will also exist. The post-inquiry modifications will ensure that objections are dealt with in a democratic and transparent way.

On development control or development management, we are moving towards local authority neighbour notification. As the deputy minister has said, it is about improving public trust and confidence in planning. Pre-application discussions will be required in defined circumstances and pre-determination hearings, where the views of all are heard, will bring decisions to local people. There will also be enhanced scrutiny of certain types of planning application: local authority interest cases and local plan departures. Many measures in the bill promote better engagement in planning and promote it earlier.

My second point is about building on the planning advice note. That is a very important part of what we are doing. We have set up a stakeholder group. The group will not necessarily comprise only people involved in planning, because the issue is often about community capacity building rather than about giving people greater opportunities to object. This afternoon we will speak to people—they may be at the committee today—from the community voices network. They are investigating how capacities can be built within communities. We are interested

to hear what they say about the matter. There will be consultation about best practice in relation to the planning advice note. We see the planning advice note as a living PAN, whereby we can identify new examples as they come forward.

Malcolm Chisholm announced a new award last year for community engagement and planning. We proposed to make the award at the planning awards ceremony this year, but other factors intervened to delay that.

A huge amount is going on. We are adding to and enhancing the legislation, but we are also considering non-legislative measures to promote greater trust and confidence in planning.

Patrick Harvie: Do you agree that, as well as trying to provide information early on about how to get involved, how the system works and so on, and making the best effort to try to involve people early on, the system should give clear reasons why decisions have been made, because it is not doing well enough in that respect? If people feel that, despite their objections, a decision was made for which they do not understand the reasons, they might have a deeper sense of injustice than they would have had if clear reasons had been given. People sometimes feel that reasons have not been communicated clearly enough, even though an authority might feel that it has expressed them.

Johann Lamont: That is an issue of confidence; it is one of the reasons why we consider local authority interest cases. In such cases, people can have less faith in what motivated a decision. I do not subscribe to such views, but I can understand why people would feel that way. There is a theme in the proposals about transparency and giving reasons. Jim Mackinnon might have examples.

Jim Mackinnon: Local authorities are currently required to give reasons only for applications that they refuse. However, we are moving towards the situation that is required by law, which is that they must give reasons for all decisions.

Patrick Harvie: How should they communicate those reasons?

Jim Mackinnon: They would be recorded in the planning authority’s decision letter and the intention is that that will be circulated to all those who have made representations on a case.

Patrick Harvie: I will finish with a quick question before other members continue with this theme. Do you agree that, as well as dealing with the technical aspects of what is in the bill and how the system works, we must achieve a feeling of fairness, which does not currently exist?

Johann Lamont: There must be a feeling of fairness and justice, which can be experienced in different ways. For example, people might feel that they had made their case, but that it was not

agreed with. Equally, someone might feel that they live in a community that seems to get more than its fair share of the things that we all need but that nobody wants. I accept that the challenge is for people to feel that the system is fair, equitable and just.

Patrick Harvie: And it is for us to ensure that they can feel that way.

Johann Lamont: I do not know to what extent one can be responsible for other people's feelings. We must do what we can to ensure that people can engage with the system and we must make it robust and transparent.

Patrick Harvie: And fair.

Johann Lamont: Of course, the system must be fair.

Patrick Harvie: Thank you.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I want to continue on the same theme, minister. The committee has taken evidence from many different groups, organisations and individuals over the past few months in preparation for this piece of work. There seems to be a will out there for people to be engaged with and involved in the planning system, but there is a big difference between consultation, engagement and participation. At our round-table discussion with representatives from various community groups, they said that they felt strongly that the word that we should use is "participation" and that the bill should be amended so that it expresses clearly the need not just to consult people but to involve local communities and allow them to participate in the preparation of the plans for their local community, however big or small it might be.

I do not know whether you have had the opportunity to consider the evidence that we took. Would you be of a mind to amend the bill to ensure that it shows clearly the Executive's intention to encourage communities to participate in the planning process?

11:15

Johann Lamont: I certainly think that everything that we have said so far about not just the bill but the process and the culture change around the bill indicates an understanding of and a commitment to the distinction to which you refer. There will always be marginal arguments about what should and should not be in a bill. Lawyers in particular love to engage with committees on that, so I will leave it to them to do so.

The political point that you are making about participation weighs on me more heavily. Regardless of whether it is in the bill, there is no doubt that our capacity to make change in our

communities is affected to the good by citizens helping to shape them. That view is held throughout the Executive.

It is also about mindsets. We can have predetermination hearings and pre-application consultations, but if people do not want the system to work and they have a tick-box attitude, they will become dissatisfied. We have to ensure not that folk are dragged kicking and screaming to do something because the bill states that they must but that they understand its significance. The distinction must be understood.

I am sure that community groups and organisations will not necessarily agree with the proposals on the end point of public engagement, but there is no doubt that we understand the frustrations with the system and the fact that such groups want to engage in a certain way. There ought not to be a block on that. Community engagement liberates our communities and our policy development and we should not fear it.

Cathie Craigie: Thank you for that clarification. Do you have any concerns about consultation fatigue? We are going to encourage community representatives to involve themselves in the process for the national planning framework and development plans, in pre-application consultation and in negotiations on good neighbour agreements, to name but a few. Might people feel that we are asking too much of volunteers and local residents?

Johann Lamont: People have to engage at the level at which they want to engage. That relates to the conversation that we had yesterday about the nature of engagement. Some folk will go to every freezing cold village hall for every meeting that takes place and other folk prefer to watch "Coronation Street." We must balance people's expectations. The challenge for us is to ensure that the way in which we consult is not exclusive and that we ask people to engage rather than to make the lifestyle choice of being a community activist. People at different stages of life with different responsibilities can engage in different ways, but that must be their choice. It is important that a balance is struck in how we engage with people and get them to participate.

Consultation fatigue is a general issue for the Executive and the Parliament. We are doing so much and we are committed to engaging with people on it, but their capacity to respond is limited by their time and energy. However, that is not a reason not to consult. Some consultation fatigue results from the fact that people make a contribution that then disappears into the system and there is no evidence of its ever coming out.

One of the great experiences for me around the Antisocial Behaviour etc (Scotland) Act 2004 was

that I could track in my mind a case from an individual meeting right through to the primary legislation and secondary legislation that would make a difference. The test of consultation is whether it serves a purpose and how effective it is in making people feel that they have engaged. Not everybody is the same and we do not have to have systems that demand a degree of techie understanding in order to engage that most people do not have.

Jim Mackinnon: I want to pick up the minister's point about techie understanding. Cathie Craigie made an interesting point about consultation fatigue. One of the big challenges is to demonstrate that development plans are relevant to communities. We have been trying to get across the idea that development plans must be much slimmer and that people must understand what is in them for them. They cannot be lengthy policy documents. Communities want to get a feel for the nature, direction and scale of change in their area. That is about communication. The issue is how to demonstrate the relevance of what is being consulted on as well as how to consult, engage and get people to participate.

Yesterday we used the phrase "contemporary consultation". It is not just about the village hall. Across Scotland, lots of innovative techniques are being used, such as planning for real in the Highlands, where people are working together over a cup of tea or coffee on an individual basis rather than someone going to the community and saying, "Here are the plans."

Our approach to supplementary guidance means that guidance will be relevant to the people who live in the area. For example, if there is a piece of supplementary guidance on the conservation area in Haddington, it will be relevant to that area rather than to everywhere else in East Lothian.

The Convener: Before we move on to Ms Craigie's next question, I record for the *Official Report* the fact that we have been joined by Alex Johnstone as Mary Scanlon's substitute.

Cathie Craigie: I am aware that the Scottish Executive will be considering different ways of involving people, and that is the right thing to do. The committee is also aware that the Scottish Executive has received a proposal for a pilot scheme to examine the benefits of mediation and consensus building in the planning system. I understand that the Scottish Mediation Network has made that proposal to the Executive. Do you have any plans to commission such an exercise?

Johann Lamont: Yes. Mediation is one of a number of measures for engaging communities in the planning process. I have seen its benefits in other areas, but I do not know whether it will be so

effective in the planning process; we will want to explore that. We intend to run a mediation pilot scheme to see whether formal mediation can be applied effectively to the planning system, and to evaluate its potential impacts and costs.

The test would be whether mediation fits with planning. We can see how it fits with neighbour disputes and other situations that require a wee bit of give and take on both sides, but to what extent can give and take be mediated between someone who is proposing to build houses and someone who does not want them? Can the situation be mediated into one that stacks up for the developer and satisfies the objector who thinks that there should not be a development? That is perhaps more of a challenge. However, we are more than happy to explore how that can be done through a pilot scheme.

Christine Grahame: I can assist the minister, as mediation is one of my hobby-horses. Will the minister ask her officials to consider the practice in Maryland, where mediation has been used successfully in large commercial planning applications for many years? Apart from running the pilot, perhaps the minister's officials could examine how that scheme operates; that might assist them.

Johann Lamont: It might be the label that causes the problem. I would have thought that for any large-scale proposal, properly engaging and negotiating with the community means mediating around some of the challenges. We can see how that has been done before, particularly for opencast coal sites.

Christine Grahame: I am talking about a more formal type of mediation than negotiation. There is an independent mediator who tries to achieve consensus and a bilateral agreement. It is a slightly different thing, and it is done in a professional manner. All I am suggesting is that, rather than reinvent the wheel, we could consider a system that already operates successfully in Maryland.

Johann Lamont: I am always in favour of not reinventing the wheel and using what works—

Christine Grahame: Or squaring circles.

Johann Lamont: Yes. We cannot square circles and reinvent the wheel at the same time.

If there is information that we can access, that will obviously be important.

Cathie Craigie: The committee considered a petition from the Association of Scottish Community Councils and Scottish Environment LINK that called for a limited third-party right of appeal. Similarly, during the committee's pre-legislative event for the public and communities on the modernisation of the planning system, there

was a call for a limited third-party right of appeal. Why did the Executive decide to reject any form of third-party right of appeal?

Johann Lamont: We recognise that some people who have come to the end point of the planning system feel that they want a third-party right of appeal that can address some of their concerns. The thrust of our argument concerns the impact of a development plan-led system, because we want a planning system that results in better-quality and up-to-date development plans and applications and which fully engages local people and environmental interests at the outset and throughout the process. We are seeking to restore fairness and balance to the system and to drive out the frustrations and dissatisfaction that people feel, thereby reducing the need for appeals to be submitted at the end of the decision-making process.

We have taken the view that a third-party right of appeal would not address the key difficulties that people experience and would not be the solution. As I have said, the solution is in the package of early engagement, early involvement and the serious responsibility on developers and others to work with communities earlier.

I do not gainsay the serious way in which community organisations have concluded that they want a third-party right of appeal. I disagree with their end point, but I recognise the frustrations that brought them to it. We want to deal with those frustrations.

Cathie Craigie: I accept what you say. Do you agree that if we were making fewer changes to planning legislation, the argument for a third-party right of appeal would be stronger?

Johann Lamont: The third-party right of appeal would not address the key problems that we have identified of not being taken seriously in the process and being unable to participate. The right would not address the lack of enforcement, which causes much frustration, because the sense is that people can say what they like when they make an application and nobody will challenge them thereafter.

The right would not address environmental justice, either. We have talked about capacity. If a community is strong, has strong voices, is in for the long haul and has a third-party right of appeal, developers might end up deciding to go to areas with less resistance.

The right would also not deal with those who repel all boarders, which we talked about, or with divided communities. We all have experience of that. I can think of significant examples from my community of people in the immediate geography of a proposal who were understandably hostile to it, although it met a broader community need that

the broader community supported. Big challenges can be resolved locally in the early stages and would not be dealt with by adding an appeal to the centre—to bureaucrats and perhaps to the Scottish ministers.

Cathie Craigie: How do you answer the charge that objectors are dealt with less favourably than applicants, because applicants have the right of appeal whereas objectors do not?

Johann Lamont: The first distinction, which we accept, is that the first party owns the land. That makes them different and gives them property rights that those who do not own the land do not have. I understand that people feel that it is unfair that developers can appeal when they cannot. I have wrestled with that and it is a matter of judgment. As with all planning matters, shades of grey are mostly involved. My test was whether it would make more of a difference to the communities that I represent to add a third-party right of appeal at the end of the process or to require people to be taken seriously at an early stage and to enforce conditions that have been negotiated. Ultimately, the latter would make more of a difference, so I would put resource and energy into that.

I understand people's feeling of unfairness, which is why we have worked hard to consider how the first-party right of appeal is, some might say, abused—I probably ought not to say that it is abused. People can be ground down by persistent appeals; evidence can be provided at the appeal stage that in effect forms a new application; and applicants might proceed through the system without early engagement and without taking people seriously. Such issues form the argument for the local review body, which is critical. If what has been decided is in line with the development plan, which will be up to date and therefore credible, and if the evidence has been considered seriously, such appeals can be screened out. That will restore that bit of the balance.

If we addressed unfairness by extending the system and dealing with appeals at the centre, I am not sure whether the community would feel more satisfied if a decision went against it at the end of the process. It might feel more satisfied if it had local engagement earlier.

11:30

Patrick Harvie: You say that you intend to restore fairness to the system, so you acknowledge that it is unfair at present. All members, in particular the minister, who regularly deals with specific cases that come to the Executive, will be aware that situations often arise in which people are not repelling all boarders—they are not against all developments—but want to

protect a specific local asset, such as an open space, because it is valuable to them. The asset may come under threat repeatedly, either from the same developer with different proposals or from different developers. There might be regular repeat applications or proposals might come along every few years. The people feel that they have to win their case time and again, because as soon as they lose it once, the asset will be lost for good.

You acknowledge that that is unfair. Are you aware that not a single community representative has told us, either formally or in one of the round-table sessions, that the proposals will make the system fair for them? Are you aware that people are not convinced about the proposals?

Johann Lamont: I was disappointed by the immediate reaction of those who speak for some environmental bodies, which was that the bill is totally against local communities and contains nothing for them.

Patrick Harvie: With respect, will you address the point that I raised?

Johann Lamont: The issue of how people feel about the bill is separate. The first instinct of those groups was to say that the bill is a developers charter and is for business. That immediately creates an atmosphere in which it is understandable that people will take a lot of persuasion to realise that the bill contains measures for local communities. We can argue about whether those measures are sufficient—I am sure that we will do so in the committee, the Parliament and our communities—but, because some people's first instinct was to characterise the bill in a certain way, it is no wonder that others are cynical about it.

I accept the issues that Patrick Harvie has with regard to fairness—I have said that we want a fair system. As the minister with responsibility for planning, dealing with individual cases has been a joy for me. I have been on a steep learning curve. However, while many people engage with proposals, take them seriously and try to make their case, some people simply repel all boards. I am amazed by some of the developments that folk want to resist. One of our challenges is that some people resist developments that all members would perhaps regard as a universal good. We need a planning system that is fair and which addresses the developments that none of us wants but all of us need. A local community might feel that it has been listened to and agreed with, but we could still have the challenge of a development that people do not necessarily want but that we must have. That is why we need engagement at the early stage of development plans and why we need to use whatever resources we have to deal with cowboy developers and to deter others who may want to follow suit.

There is a challenge of resource. We talked about where the resource must go; my view is that it should go into community engagement and, critically, enforcement, although there is a fine judgment to be made. You might argue that a third-party right of appeal might make people feel better about the system, but I do not agree that the system would be experienced differently on the ground, or that it would address issues of environmental justice.

The Convener: Mr Harvie can have one more question on the issue, as other members have questions.

Patrick Harvie: I appreciate that.

No one disagrees that early involvement is good—we all want to achieve that. However, I want to be clear about your answer to the question that I asked. Setting aside the comments that non-governmental organisations, campaign groups and mere political parties have made about the bill, do you accept that the community groups and representatives who have come to the committee, and who have considered the bill and tried their best to listen to and understand your words about it, are not convinced that your proposals will address their concerns about unfairness in the system?

Johann Lamont: I must accept what people say to me. I am in the business of persuading people that we are presenting a whole package and that all the parts must stack up together. That is a matter of trust. People must judge us by what we say and do.

Some people might feel better if a third-party right of appeal was added on to the end of the process, but I contend that it would not address their uncertainty about and lack of confidence in the bill. That is why the bill must also address enforcement, environmental justice and how to deal with the hard questions on which communities do not agree with each other.

Ms White: You must agree that, if supporters of a third-party right of appeal overreacted, so did other sides. For example, the Confederation of British Industry said that businesses would pull out of Scotland if we had a third-party right of appeal. It works both ways.

Do you agree that the vast majority of people want not confrontation but consideration and, as Cathie Craigie said, participation? Do you not agree that having the check and balance of a third-party right of appeal would help to reduce confrontation and make developers contribute more to communities?

Johann Lamont: I contend that it would not be a check or balance but would extend the system and take the decision making away from a local

level by giving it to bureaucrats or Scottish ministers. That does not add a great deal of democratic responsibility.

To be clear on your first point, when the bill was introduced, I was frustrated that some people wanted us to stay in the trenches and conduct trench warfare. That was as clear of elements of the business community as it was of the environmental groups. With my political viewpoint, I was perhaps more disappointed in the environmental groups than I was in the other side, but we must let go of the frustration of the past and the dialogue of the deaf—to mix as many metaphors as possible into the discussion.

I am not comfortable with third ways and middle ground and my natural instinct is not to support such an approach. However, some people will be determined to make environmental engagement and the valuing of community participation central to development and what happens in our local communities. We need developers who understand that it is not about getting past first base by agreeing just now with whatever we want them to say; they have to be in it for the long haul and planning conditions must be made to stick. That is the critical aspect of long-term change. As I have said, it is a matter of judgment whether a third-party right of appeal would do that and I judge that it would not—although I make no comment on those who make a judgment in the other direction from me—and may prevent us from using our resources effectively for enforcement, which makes a big difference.

Ms White: I agree with a lot of what you said on consultation but, if the Executive is determined not to give communities the same rights of appeal as first parties—that is, developers—why not remove the right of appeal from developers, which would create a level playing field and ensure that people are consulted? I have asked that question before.

Johann Lamont: We have sought to reduce the first-party right of appeal. It is not possible simply to take away a right that people have, but we have sought to reduce it to prevent its abuse.

I will make one observation on the democratic deficit: to some extent, people's views of a system reflect their experience of it, and there are contradictions in those views. I will flag up one such contradiction. Some people will tell us that they are extremely frustrated when the centre upholds an appeal by the first party because the local authority agreed with the local community. However, if the local authority had disagreed with the local community, they would still think that it is legitimate to have a third-party right of appeal.

We must all address the issue of to what extent local authorities have authority, to what extent they can be challenged to represent their local

communities openly and transparently and to what extent appeals extend beyond the local authority. One of the critical points about the first-party appeal to the local authority to review a decision is that local government's authority comes with a challenge to be transparent in decision making and to engage fully with the community.

Patrick Harvie: I want to move on to the national planning framework—

Johann Lamont: The easy bit.

Patrick Harvie: Pretty much everyone who has come before us has said, in relation to the parliamentary consideration of the national planning framework, that 40 days is insufficient. Do you accept that you have got that wrong? Are you open to changing that section at stage 2?

Johann Lamont: It will be helpful if I outline how we view the whole system, how the 40-day period fits in with that and where that figure came from.

We considered that the period that is required for considering affirmative regulations is a reasonable comparator for deciding the final period of the NPF's consideration. It is certainly not in the interests of the Scottish Executive for the NPF not to be scrutinised and we would not want to do anything that would prevent scrutiny.

There is a suggestion that everything has to be done in 40 days and that no work can be done before that period starts, but there will be a long process of preparing the national planning framework and that will involve stakeholders, the public and parliamentarians, who will all be given the opportunity to participate in the debate.

The process would involve an initial consultation on the scope and content of the NPF, the issuing of a draft for public consultation, revision in the light of reaction to the draft and the scrutiny of a final draft in Parliament. There would be rounds of regional and thematic seminars and parliamentarians would have the opportunity to offer views on the scope and content of the framework prior to the publication of the consultative draft.

We have to be careful that we do not see ourselves as the only people who are capable of scrutinising this issue and bear in mind that the draft that is submitted to Parliament for its 40-day period of consideration will have been in the public domain for much longer than that, which means that a lot of what it contains will not come as a great surprise. Parliamentarians will have been invited to express their views on the scope and content of the draft and, subsequently, on the consultation draft.

I do not want anyone to get the idea that we want to scuttle a national planning framework in the Parliament in the shortest period of time

possible and then go on and do other things. There is a rigorous process before the 40-day period begins. That length of time was seen as reasonable in relation to affirmative orders and we took that as an indication of how long would be required.

Patrick Harvie: I appreciate the importance of all that prior work and I am sure that everyone who is concerned about this issue will want to participate in that as well as discuss our scrutiny process with us.

The Executive's proposals do not include a formal process of examination in public. If the committee and Parliament came to the view that that is an important part of the process and that we should carry that out as part of the parliamentary process, prior to a vote in Parliament, 40 days would be insufficient. Would the Executive be open to having the bill amended on that point, to allow that process to take place?

Johann Lamont: I will reflect on that. However, I have never sat on a committee—as a convener or as a member—whose members felt that they had enough time to do everything they wanted to do. People can always make a case for more time. The reality is that we simply have to manage our business as well as we can. Affirmative orders have a period of 40 days attached to them. Parliamentary committees have a great deal of power to say how they will deal with things and the proposed period is not out of kilter with the normal process. We are keen for Parliament and committees to become engaged in the process and we must accept that the tension around the management of time will exist. Perhaps that is something that business managers will address in time.

Patrick Harvie: Given the strength of feeling that has been expressed to the committee, I hope that the minister will be open to some changes being made later on.

The Executive is required to have regard to the views of Parliament on the NPF. What does that mean?

Johann Lamont: It means the same as any requirement on the Executive to have regard to what the Parliament says on a range of issues. Obviously, it depends on what recommendations are made on the draft NPF and on the resolution. The Scottish ministers will respond to those recommendations as they respond, for example, to a stage 1 report.

11:45

Patrick Harvie: So the Executive has to respond, but it does not have to revise the NPF if it chooses not to?

Johann Lamont: The Executive will respond to recommendations and revise the NPF accordingly, and then Parliament will decide on the revised draft. The process is similar to the way in which one can track how a bill might change in response to a stage 1 report. The Executive might take the view that it had politically committed itself to supporting certain issues, and then take the consequences of pursuing them.

Patrick Harvie: I am interested in your comparisons with other elements of the parliamentary process such as stage 1 consideration of a bill. I should point out that bills are passed by Parliament; if the Executive wants to resist an amendment, but Parliament decides to support it, the amendment is agreed to and becomes part of the legislation. The process for the NPF does not work in that way. Parliament will have an opportunity to express a view, but the Executive can, if it so chooses, go its own sweet way.

Johann Lamont: Well, under our political system there are consequences if one cannot garner majority support for a decision.

Patrick Harvie: Did the Executive ever consider the option of allowing Parliament to approve the NPF?

Johann Lamont: I feel that the NPF is all about the Scottish ministers reaching conclusions based on their electoral commitments to pursue certain matters and then being tested on those conclusions. For example, I suspect that the two of us will never agree on the position of motorways in a national planning framework. Such major questions will be resolved through the electoral process and through our ability to garner political support for our position.

I believe that this is partly about the politics of government. In my view, the NPF represents a spatial expression of the Scottish Executive's political programme and its commitments on transport, waste and so on. Perhaps the chief planner can expand on its various planning aspects, particularly those that we discussed yesterday.

Jim Mackinnon: It has been suggested that spatial strategies in other parts of the United Kingdom and abroad are subject to independent examination, but that tends to be the case when strategies involve substantial housing allocations that, because they are the responsibility of local authorities, are not covered by the NPF.

Our situation is more analogous to that in Ireland, Denmark and the Netherlands, where certain strategies have parliamentary involvement and others do not. We are simply trying to provide Parliament with a formal role in the process. As the minister has explained, parliamentarians will

have many opportunities to engage in the process of drawing up the NPF. The 40-day period is not just a short-term window of opportunity; it comes at the end of a period of consultation.

Christine Grahame: I have some questions about the process, which seems rather new. You say that the NPF has the status of an affirmative order—or, rather, it is subject to the same process as an affirmative order but seems to stand alone. It is neither a bill nor an affirmative order.

I hear what the minister says about pre-consultation. There was substantial pre-consultation on the Adults with Incapacity (Scotland) Act 2000, but the then Justice and Home Affairs Committee wanted nevertheless to take its own evidence. The point is that although the NPF might be subject to a rigorous advance process of evidence taking and consultation, a committee—if, indeed, it goes before a committee—will get its hands on it only when the draft is laid before Parliament. In that regard, I support Patrick Harvie's view that 40 days is simply not enough.

I acknowledge the minister's comments about the pressures on committees: we are looking at delays in and timescales for stage 2 consideration because we want good legislation, not legislation that is rushed through.

I suggest, convener, that we include the matter in our report and ask the Procedures Committee to examine how the national planning framework will be processed by the Parliament. If there will be something similar to a stage 1 report, the minister could bring the matter to the Parliament for debate and the Parliament could decide whether to vote in favour of it. If the Parliament did not support the framework, it could show that in the vote on the report.

We are in uncharted waters. I am surprised that we do not have a clearer idea of your thoughts about how the Parliament will handle the framework.

Johann Lamont: First, I did not say that the national planning framework will be of the nature of an affirmative order. I was making a comparison to suggest the amount of time for which the Parliament might scrutinise it. It does not have that standing—

Christine Grahame: I corrected myself, minister. I said that the processes are similar.

Johann Lamont: Clearly, the framework is not a bill, either.

There is an issue about the timescale. Parliamentarians will not come across the national planning framework for the first time in committee. Lots of work will be done at the earlier stages in local communities and I hope that members will

engage in that. It is not a question of our sitting around in the Parliament and hoping that somebody will bring the matter to us so that we can have a think about it. It is a long, on-going process.

The national planning framework is a spatial expression of Government policy around its priorities and strategies. If, in a vote, the Parliament decided that it did not want trains any more, would the Green party say, "Well, we'd better not campaign for trains any more because the Parliament has decided that there is no role for the rail network in the national planning framework"? The framework is an expression of the Government's position.

It is obvious that good government is about listening as well as about doing. That is why the scrutiny process is important. My analogy with stage 1 was perhaps not very helpful because the national planning framework is not a bill, but it is an expression of Government policy. We must be transparent about how it is expressed and allow the opportunity to build consensus on where the issues of need are and the big challenges that we face.

John Home Robertson: My question might be hypothetical, but I will ask it anyway. A fundamental principle of the planning system is that planning decisions must be made on objective grounds by unbiased planning authorities that act in a quasi-judicial role. That applies to ministers as well as to councils. In the entirely hypothetical and, I hope, unlikely circumstance that ministers found themselves bound by political prejudice in the form of a parliamentary resolution or anything else about, for example, a particular category of electricity generator, how could the Scottish ministers comply with the prejudice test when they make decisions? This might be another opportunity for Mr Mackinnon to refer to a location in East Lothian.

Johann Lamont: That might be a hypothetical question too far. I am sure that it would not be wise for me to say anything that would have legal consequences for my being unprejudiced, so I defer to the techie folk.

Jim Mackinnon: That is very kind of you, minister. It is a well-established practice in both local and national decision making that someone who has expressed a view on a planning application should not be party to making a decision on it. I know that that causes some concern among local members. Our ministers have been assiduous in not expressing views on particular planning applications. If they do express such views, they are advised that they cannot be party to the decision. That has been observed rigorously by the Executive over the years.

However, it is clear that a Government can have a policy and take decisions to implement it. Lynda Towers will correct me if I am wrong, but one of the first tests of the planning system's compliance with ECHR was in the Alconbury case, in which ministers had a policy and took a decision in line with it. That was seen to be ECHR compliant. It would be odd if ministers had a policy but took no cognisance of it in coming to a decision.

The point about the national planning framework is that it will establish a list of national developments and identify in general terms where the locations might be. In the case of, for example, the Borders railway, the locational options are limited. In other cases, there may be much more—

Christine Grahame: I am the Borders railway.

Jim Mackinnon: Sorry?

Christine Grahame: You looked at the wrong person.

Jim Mackinnon: No. I mentioned an issue that Patrick Harvie raised with Malcolm Chisholm when the white paper was launched.

If we take the reopening of a railway line, it is clear that the locational choices are extremely limited, but the options for an integrated waste management facility or a biomass station are much more varied. The point of the national planning framework is to establish the principle; the purpose of an inquiry is to report on the impact on the chosen location, the design and the environmental impact. There is a distancing because a clear technical process is involved, so I do not think that the role of the Scottish ministers would be prejudiced, but Lynda Towers might want to add to that.

Lynda Towers: I strongly agree with Jim Mackinnon. In a planning inquiry, a reporter should not necessarily consider ministers' policy, but we have all been at inquiries at which there have been many arguments about ministers' policy. The proposal in the bill will provide greater clarity and should speed up the way in which the planning system deals with individual applications, without reducing the rigour with which issues such as location, need and effect will be considered.

Patrick Harvie: You described the NPF as the spatial expression of Government policy and reflected on the democratic legitimacy of the Government, but is it not true that a minister would have such authority even in a minority Government? Stranger things have happened.

Johann Lamont: I am tempted to say, "And your point is, caller?" I am sorry; I am not being helpful.

Patrick Harvie: My point is that your argument about the democratic legitimacy of the NPF as an

expression of Government policy would not apply in such circumstances.

Johann Lamont: The democratic legitimacy of the NPF is different from the support that Parliament can give to particular policies through their expression in legislation, which is subject to the parliamentary process.

Patrick Harvie: The expression of Parliament's will would have democratic legitimacy, but the expression of Government policy would not.

Johann Lamont: The Government's capacity to deliver on its policies is a different matter. We are discussing a balance in how government works. Part of the role of the Government is about going to the electorate with a position on bicycles and trains, for example, and saying that if the electorate endorses that position, the Government will pursue it. However, it must be recognised that it is necessary for the Government to build consensus by working with parliamentarians who bring something else to the mix.

As I have said, the national planning framework is an expression of Government policy. We could just leave it at that, but we want to have certainty and to be able to plan ahead. That is why there will be scrutiny and it is why local communities will be involved.

Patrick Harvie: The committee will have to consider the need to ensure that the public can continue to have trust and confidence in the system, whatever political scenario might develop.

I have two more, slightly separate, questions on the NPF. The first is on sustainable development. The bill will impose on local authorities a duty to have regard to sustainable development when they carry out their development planning functions. There has been broad consensus among our witnesses that that duty should also apply to the Executive in relation to the NPF. Do you agree?

Johann Lamont: I will clarify our position. The promotion of sustainable development was one of the three key aims of the first NPF. The second NPF will fully reflect the Executive's commitment to sustainable development. As the committee will be aware, it will be subject to strategic environmental assessment to ensure that it addresses sustainability and environmental protection explicitly. We will give further consideration to whether the bill should attach to the framework a specific duty to contribute to sustainable development.

Patrick Harvie: That is helpful.

My final question is about NPF 2. How does the Executive plan to involve key stakeholders, such as the public and planning authorities, in the preparation of that document? Where has thinking

got to on that? How much work on NPF 2 is already in the pipeline?

Johann Lamont: In relation to your first point, I refer back to my earlier response on consultation on the scope and content of the NPF. I said that a draft would be issued for public consultation and that the document would be revised in the light of reaction to that draft and that Parliament would scrutinise a final draft. Regional and thematic seminars will be held and MSPs will have the opportunity to offer views on the scope and content of the framework prior to the publication of the draft for consultation. Jim Mackinnon might want to sketch out what stage our thinking on NPF 2 has reached.

12:00

Jim Mackinnon: It is an important question. When work on NPF 1 was started, people did not really know what it was. A document, called "European Spatial Development Perspective", which espoused theories of balanced polycentrism, was circulating in the ether. We thought that that was not a concept that applied particularly well in Scotland. We wanted to make a document that could be seen as relevant. We had tended to produce strategies on the economy or the environment, but we had not focused on how Scotland was changing as a place.

We did not at that point proceed on a statutory basis: we held a wide range of regional seminars. There were five of them, and they were conducted twice. Then, about two years ago, we published our document. It was well received. In fact, it won awards. There was a feeling, based on the view of the Finance Committee, that we needed to move from strategy to implementation. We recognised that we must do that.

Over the next few months, you can expect, first, a monitoring statement on the NPF, followed by an indication of how we will proceed with consultation and engagement. Some of that has to be bilateral, involving key agencies such as Scottish Water, and it will concern how we engage more effectively with local communities. Regional seminars are fine, but if national developments are to be involved we need to establish how we do things at the right scale to make them relevant to local communities. As the minister has said, we intend to publish something on how we intend to go about that, which will inform how we go on to shape the process.

Patrick Harvie: Assuming that the bill is passed in something like its current form, do you remain confident that you will get the next NPF in place by 2008?

Jim Mackinnon: Yes. Clearly, we do not want to do too much work on that now, as we do not

want to prejudge the will of the Parliament. If the Planning etc (Scotland) Bill gets royal assent with substantially similar provisions to those that it contains now, we would want to start work very early after that to progress to a 2008 publication of NPF 2, with provision for strategic environmental assessment and a consultative draft, as well as a sustained and intensive programme of engagement.

Christine Grahame: I cannot wait any longer—I have to know what advanced polycentrism is.

Jim Mackinnon: Sorry—it is balanced polycentrism.

Christine Grahame: Balanced polycentrism? Well, what is balanced polycentrism?

Jim Mackinnon: Think of Germany, with equally distributed towns of broadly equal size. The philosophy is that that is a good thing. I took the view that although Scotland is polycentric, in that it has many centres, it will never, given its geography, have a balanced polycentrism.

Christine Grahame: I thank you for that. You are getting into my little column more and more often. First I had otters; now I have balanced polycentrism.

I want to ask you about processes. There are a lot of strategies and frameworks around. There is the "Framework for Economic Development in Scotland", there is "A Smart, Successful Scotland", there is the national waste strategy and there is the transport strategy, not to mention the infrastructure investment plan—and I said all that without drawing breath. How do you ensure, as you are drawing up the new NPF, that all those factors come together in what could be described, using that awful expression, as joined-up government? How can all that, and particularly transport strategy, which councillors tend to say is key to much of planning development—I agree with them—be integrated?

Johann Lamont: The national planning framework seeks to assist the process of joined-up government rather than be a challenge to it. You have mentioned the series of strategies across the Executive. We have probably all demanded further action plans, strategies and commitments to X, Y and Z at some point, although that could clutter the landscape even more. There is an issue for us all in being strategic and ensuring that things lock together.

I can provide a tiny example. It has been possible to hold an entire discussion around community engagement and involvement in the scope of the Planning etc (Scotland) Bill—or at least it could have been possible—without referring to lots of other really good work that has been done on community engagement through

community planning, to the lessons that have been learned from that and to the support that has been gained through that. There will always be a challenge to achieve joined-up thinking at any level of government. You are mindful of that, judging from your general point. I would argue that the national planning framework seeks to assist that process, rather than detract from it.

Christine Grahame: How will you ensure that the process of review remains sufficiently relevant while being up to date and flexible? That question arose previously during an informal session with councillors in relation to local development plans.

Johann Lamont: That is part of the culture change aspect. We need to lock review and monitoring into the process, together with actually doing things. We have spoken a great deal today about not treating royal assent as the end point, but more as the beginning point in some respects. These things are not set in aspic: when proposals are developed or established, they become live, working documents, which we must keep aware of and keep working on. They are there for a purpose.

In my view, the national planning framework serves the purpose of expressing our spatial commitments in a range of developments, so it is important that the review process is relevant.

Christine Grahame: That is your aim, but how will you achieve it?

Jim Mackinnon: A practical example is that we will publish the first monitoring report on NPF 1 within the first two months. This is about management and good government as opposed to statutory process and procedure.

Christine Grahame: So you will be publishing reports as you go along?

Jim Mackinnon: We will publish the monitoring report on NPF 1 and then produce a document indicating how we will take forward NPF 2. There will be seminars and a draft will be produced for consultation.

Christine Grahame: That is what I was asking about.

A serious issue for my part of the woods—the Borders—and elsewhere in Scotland is flood risk. How will you identify areas at risk of flood in the national planning framework? I know that you took housing out of the equation, but there are still developments in known flood risk areas—or indeed prospective flood risk areas, given the climate change that we are experiencing.

Jim Mackinnon: I do not see specific local allocations being made. That is not really for the Executive.

Christine Grahame: I parked that question. I understand that.

Jim Mackinnon: The Executive has an up-to-date Scottish planning policy on flooding, which was issued in the past 18 months. Within that there is a direction that requires planning authorities to notify the Scottish ministers if they propose to put developments on a flood plain. The Scottish Environment Protection Agency has recommended against refusal. The minister has talked about the range of cases that have come across her desk, which include a number of cases involving development on a flood plain. It is up to ministers to decide whether the applications are called in or cleared back to the local authority. There is no intention to use the national planning framework to change that arrangement.

Christine Grahame: Major developments that are part of the national planning framework will be set in a broad locality, rather than specifically. Would you have a note of the areas in which developments simply could not go because they would be unsuitable?

Jim Mackinnon: There are plans afoot to publish SEPA maps of flood risk. The maps in the NPF tend to be A4, so it would be difficult to map such areas meaningfully at that stage. Our intention is to ensure that issues around flooding and flood risk are incorporated properly into development planning so that when choices are made about land allocation, they take into account the need for accessibility, water and drainage provision and flood risk. The decision will be made in the round and explained. The intention is that SEPA will be made a key agency for the purpose of development planning. If its advice is not taken into account, there will be opportunities for the Scottish ministers to intervene.

John Home Robertson: On the perhaps optimistic assumption that we will be able to move on from the old culture of reactive, and sometimes even reactionary, objections to good development proposals as well as bad development proposals and that we are going to succeed in promoting consensus about desirable developments in the future, what visible results do you expect to see from the bill in relation to sustainable economic growth in Scotland?

Johann Lamont: I have highlighted before the issue of certainty. People must be clear what works, what does not work, what is expected of them and what it is not a good idea to keep trying to do. We will not reward people for doing persistently things that are out of kilter with what communities want. It is a good message for developers that there will be certainty about how the system works and, in relation to the NPF, what we see as the big issues around development and economic growth. The key issue is certainty. People must know where they are and what is expected of them and they must be clear that that expectation should be met.

The Convener: I want to take you back to the overall package. We have covered a number of issues over the past two days, all of which are interdependent. How confident is the Executive that all the parts of the bill can come together as a whole?

Johann Lamont: The bill was not written on the back of an envelope; it is the result of a long and serious process. As I said, I respect the views that people have on it. However, I hope that people will acknowledge that it is the product of a desire to address the challenges in the planning system, for those who live in local communities and who have frustrations, and for developers that feel that they cannot develop good and worthy proposals because of blockages.

To the extent that one can be confident of anything in life, I believe that, because the bill is the product of serious thought, not just in the Executive but far beyond that, and of the recognition of the importance of understanding people's local experience, the package will deliver on the aspirations that we all have. That will happen if we do the hard graft beyond the date of royal assent on community engagement and with those who promote sustainable developments that are in Scotland's economic interest.

The Convener: Will the package deliver a planning system that is fit for purpose?

Johann Lamont: That is the aspiration and I have every confidence that it can do that.

The Convener: Do members have any more questions?

Johann Lamont: I would like to make one last wee point, to show members how much I know about udal law. [*Laughter.*]

The Convener: Mary Scanlon is not here.

Johann Lamont: As I did not know what polycentrism is, I must make one wee bid for the techie anorak. Yesterday, Mary Scanlon raised an issue about udal law and marine fish farming. Jim Mackinnon wrote to the committee on the matter but, for clarification on the record, I point out that the amendments that the bill will make to the 1997 act will provide the basis on which all applications for marine fish farming will be determined. While the consultation paper "Extending Planning Controls to Marine Fish Farming" was distributed widely, the issue of udal law was not raised in any responses. However, the changes in respect of marine fish farming will not affect anyone's rights under udal law.

The Convener: I am sure that Mary Scanlon, who has pursued that issue vigorously, will reflect on your comments. That concludes our evidence taking from the minister. I thank her and her officials for attending.

Meeting closed at 12:12.

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