

COMMUNITIES COMMITTEE

Wednesday 19 April 2006

Session 2

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COMMUNITIES COMMITTEE

12th 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)

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

Johann Lamont (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 3

Scottish Parliament

Communities Committee

Wednesday 19 April 2006

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

Item in Private

The Convener (Karen Whitefield): I open the 12th meeting of the Communities Committee in 2006 and remind everyone that mobile phones should be switched off. We have received apologies from Tricia Marwick, who is chairing another committee this morning.

Before we consider agenda item 1, I place on record the committee's thanks to Mary Scanlon, who recently resigned from the committee and the Parliament. We will all want to recognise Mary's contribution to the committee in the past three years. She was a hard-working member who played an active role on the committee and made good contributions during the passage of the Antisocial Behaviour etc (Scotland) Bill, the Charities and Trustee Investment (Scotland) Bill and the Housing (Scotland) Bill. She was very interested in the Planning etc (Scotland) Bill, which the committee is currently considering, and I am sure that her contribution to the committee will be missed. We wish her well in the future.

Members: Hear, hear.

The Convener: Item 1 is consideration of whether to take in private item 5, which concerns the committee's draft stage 1 report on the Planning etc (Scotland) Bill, and future items relating to the stage 1 report. Do members agree to take those items in private?

Members *indicated agreement.*

Subordinate Legislation

Planning and Compulsory Purchase Act 2004 (Commencement No 2 and Consequential Provisions) (Scotland) Order 2006 (draft)

09:34

The Convener: Item 2 is consideration of the draft Planning and Compulsory Purchase Act 2004 (Commencement No 2 and Consequential Provisions) (Scotland) Order 2006. I welcome the Deputy Minister for Communities, Johann Lamont, who is accompanied by Executive officials Alan Cameron and Christine Munro. The Scottish statutory instrument that we are considering is subject to the affirmative procedure, so the minister is required under rule 10.6.2 of the standing orders of the Scottish Parliament to propose by motion that the draft instrument be approved.

Committee members have received copies of the draft order and the accompanying documentation. I invite the minister to speak briefly to the SSI, but she should not move the motion yet.

The Deputy Minister for Communities (Johann Lamont): I send my best wishes to Mary Scanlon. It was a privilege to serve with her on the committee and to work with her when I attended the committee as a minister, which I have seemed to do fairly frequently. She certainly helped me to focus on the issue of udal law a little more than I had ever intended. I associate myself with the convener's comments.

I thank you for the opportunity to discuss the draft order, which relates to the removal of Crown immunity from planning control in Scotland. It might be helpful if I begin my describing briefly some of the background to the issue.

Members will know that legislation does not bind the Crown unless there is express provision to say that it does. A series of court decisions has confirmed that the planning acts do not bind the Crown. In Scotland, the Crown follows a set of administrative procedures that broadly reflect the statutory requirements on processing planning applications. Provisions for the removal of Crown immunity from planning control, including provisions relating to Scotland, were introduced in the Planning and Compulsory Purchase Act 2004. Some members of the committee will recall the discussion about those provisions and the related Sewel motion that we had towards the end of 2003. The draft order that is before the committee is one of three commencement orders that will bring into force the Scottish provisions in the 2004 act.

The first order commenced certain provisions in so far as they involved rule, regulation and order-making powers. That was to allow us to introduce the necessary secondary legislation to accompany the removal of Crown immunity. I will return later to the issue of secondary legislation.

This second order includes provisions commencement of which requires consequential amendments to some of the Scottish planning acts—specifically, the Town and Country Planning (Scotland) Act 1997 and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. As a result of the required amendments, this commencement order is subject to the affirmative resolution procedure.

The provisions that are being commenced relate to procedures for making urgent applications to the Scottish ministers for planning permission, under section 92 of the 2004 act, or listed building or conservation areas consent, under section 93 of that act. The relevant sections introduce new provisions to the existing Scottish planning acts. They allow a developing department to apply directly to the Scottish ministers for those permissions where a development is urgently required in the national interest. That means that the developing department does not apply in the first instance to the planning authority. However, the provisions of the 2004 act, together with the amendments to existing secondary planning legislation in relation to the Crown, will ensure that consultation takes place with the planning authority, that the proposals are advertised locally and that the usual requirements for neighbour notification and consultation are applied.

The consequential amendments add references to decisions that are made under the new urgency procedures to the existing provisions that apply to decisions on planning applications and listed building and conservation area consents. For example, the powers to revoke planning permissions under section 65 of the main planning act will apply to permissions granted under the urgency procedure. Most of the consequential amendments are to the main planning act.

The third set of provisions that the draft order will commence are in section 94(4) of the 2004 act, which introduces provisions to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 on enforcement in relation to the Crown. The consequential amendment will ensure that the new enforcement provisions are applied to the control of demolition in conservation areas, as is the case with other legislation on listed building consent.

I mentioned earlier other secondary legislation in relation to the removal of Crown immunity. We are completing work on a group of Scottish statutory instruments that will apply existing secondary

planning legislation to the Crown with amendments where necessary; introduce rules for the functions of special advocates and the making of directions in relation to national security-sensitive information; and introduce transitional arrangements to govern the changeover from the current administrative procedures on Crown development to the statutory system. The instruments will be subject to the negative procedure and we hope to lay them before Parliament in the next few weeks.

Along with those statutory instruments, we will make our final commencement order, which will complete the coming into force of the Scottish provisions in the Planning and Compulsory Purchase Act 2004 and will remove Crown immunity from planning control.

I hope that this statement has provided useful background information on the second commencement order. I am happy to take questions.

The Convener: No members have any questions for the minister, so I ask her to move motion S2M-4174, on the instrument.

Motion moved,

That the Communities Committee recommends that the draft Planning and Compulsory Purchase Act 2004 (Commencement No.2 and Consequential Provisions) (Scotland) Order 2006 be approved.—[*Johann Lamont.*]

Motion agreed to.

The Convener: Do members agree that we should report to the Parliament on our decision on the draft order?

Members indicated agreement.

The Convener: I thank the minister for attending the committee today. The meeting will be suspended for a moment to allow her and her officials to leave.

09:40

Meeting suspended.

09:40

On resuming—

Accountability and Governance Inquiry

The Convener: The next item on the agenda is consideration of a letter from the convener of the Finance Committee on that committee's inquiry into accountability and governance. Copies of the letter have been circulated to members. The letter sets out the remit of the inquiry, which is to examine the statutory independence of parliamentary commissioners and ombudsmen and their accountability for expenditure. As part of the inquiry, the Finance Committee will consider other bodies that have a degree of independence to establish whether different accountability mechanisms exist. The letter invites comments from committees that had a role in establishing any of the bodies that the Finance Committee has identified or that have taken oral or written evidence from them. The letter identifies the Office of the Scottish Charity Regulator as one such body.

My view is that it would not be appropriate for the committee to comment on many of the wider issues on which the Finance Committee seeks evidence because we have not taken any evidence that would allow us to reach a view. However, I suggest that we go through the questions that are set out in bullet-point format on page 2 of the letter and consider whether and how we should respond to them. Are members content with that approach?

Members indicated agreement.

The Convener: Before we go through the bullet points, do members have any general comments on the letter?

Scott Barrie (Dunfermline West) (Lab): I have none apart from the fact that the inquiry is worthwhile. I do not know whether we want to note that in our response to the Finance Committee. It might be difficult for us to make informed comments on OSCR, given that it is a relatively new body, certainly as it is now constituted.

The Convener: With that, we will make a start on the bullet points. The first one is:

"Do you think there is any confusion or overlaps between the remits and responsibilities of the various commissioners and ombudsmen (if appropriate, please give an example)".

The clerks suggest that, as we have not taken evidence on the matter, we can speak only in relation to OSCR. Nothing emerged while we were taking evidence on the Charities and Trustee Investment (Scotland) Bill. Are we satisfied with that?

Patrick Harvie (Glasgow) (Green): Would it be possible to make a general point about the issue of overlap being misinterpreted? Two organisations might work on the same issues but have different purposes and remits. They might be required to work on the same issues but from different points of view. That should not necessarily be seen as overlap. It depends what the wording of the question means.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): As Scott Barrie and the convener suggested, we have to respond to the letter as a committee. Many of us have opinions from our own experiences of working with different organisations, but we can respond to the inquiry as individuals. We are discussing the committee's experience of working with the bodies that the Finance Committee mentions in its letter.

The Convener: I appreciate Patrick Harvie's point and I have some sympathy with it on one level, but we are responding purely from the perspective of the evidence that the committee took on OSCR. We did not take any evidence about the issue of overlap. I think that we should state that in our response. Are you satisfied with that?

Patrick Harvie: Okay, I take the point. Will we preface our response by making it clear that, given that OSCR is a new body, issues might arise after the office has been in operation for one or two years that we will want to address?

09:45

The Convener: It is important that we do that. Although there appear to be no issues in the context of the points that we have been asked to consider, matters might arise when OSCR is up and running. It is important to note that we are reflecting on a snapshot that is based on the evidence that we took. Are members content with that approach?

Members indicated agreement.

The Convener: The next bullet point says that the total budget for all parliamentary commissioners and ombudsmen is around £6 million and asks whether the committee thinks that that is too much, too little or just right.

Scott Barrie: We cannot comment on that.

Cathie Craigie: We need to phone a friend.

Christine Grahame (South of Scotland) (SNP): Did we hear evidence that there is concern about OSCR's funding? I am trying to remember; perhaps the clerks will check.

The Convener: My understanding—with the clerks' assistance, I should add—is that it is unclear whether OSCR's budget, which is about

£4 million per annum, forms part of the budget of £6 million for parliamentary commissioners and ombudsmen. It seems unlikely that the £4 million is part of that budget. The Communities Committee and the Finance Committee thought that £4 million was a reasonable and proportionate budget. It is expected that the budget will be reduced after OSCR has established the Scottish charity register and reconsidered the charitable status of all charities in Scotland.

Christine Grahame: Convener 1; Christine 0.

John Home Robertson (East Lothian) (Lab): I suppose that we are saying that OSCR is regarded as a parliamentary commissioner or ombudsman for the purposes of the Finance Committee's inquiry. However, there is a debate to be had on the matter.

The Convener: The Finance Committee is keen to consider different regulatory frameworks, which includes the framework for OSCR.

Euan Robson (Roxburgh and Berwickshire) (LD): A general point might be made about transparency of budgets. I do not know about OSCR, because I was not a member of the committee during the passage of the Charities and Trustee Investment (Scotland) Bill. Which department funds OSCR and which budgets fund individual commissioners? I think that the budget for the commissioner for children and young people comes from the Scottish Executive Education Department.

The Convener: OSCR's budget comes from the Scottish Executive Development Department.

Euan Robson: That is fine. However, we are told that the total budget for parliamentary commissioners and ombudsmen is £6 million and OSCR's budget is £4 million. I am not clear about the situation and it might be helpful if there were greater clarity about where funding is located in the overall Scottish Executive budget. This might be a general point, but it is difficult for the public to follow the trail—that is my impression from budget discussions in different committees.

The Convener: I understand that OSCR's budget comes from the Development Department. In our response we should note that we are unclear whether the £4 million per annum that has been allocated to OSCR is part of the £6 million—it is unlikely to be part of that figure. We can include the point that Mr Robson made.

The next bullet point asks how we can combine accountability of commissioners and ombudsmen to the Parliament with operational independence. Again, the committee can comment only on OSCR, but the office might offer a helpful model. OSCR is a non-ministerial office holder of the Scottish Administration—it is a non-ministerial

department. OSCR will have operational independence and will be directed by ministers or the Parliament, but it will be required to present an annual report to the Parliament, to ensure that it remains accountable for its use of public funds.

John Home Robertson: That mechanism might be appropriate for other commissioners and ombudsmen.

The Convener: The clerks have pointed out that I missed a rather important not. I should have said that OSCR will have operational independence and will not be directed by ministers or Parliament.

Are we happy to make that our response?

Patrick Harvie: A key issue in the discussion is the fact that although a body is not directed by ministers, a level of budgetary interference is another form of control. It is not the same as giving directions to a body, but it reduces its independence. Whether the budgetary control or interference comes from ministers or from Parliament, the effect on a body's independence is the same. Can we limit our comments to the term "direction by ministers"? To be independent, a body must be able to decide for itself how it will do the job, rather than be constrained by financial or budgetary controls from outside.

The Convener: That will not be the case for OSCR. Although it has an initial operating budget of £4 million, it will not always stay that way because OSCR's work will become self-financing. Therefore, it will not rely on the Executive for its income to allow it to function. OSCR is an example of how such an organisation can be truly independent. We are commenting solely on OSCR, not on how other ombudsmen or commissioners might operate.

Are we happy with the response to that bullet point?

Members indicated agreement.

The Convener: The next bullet point asks whether Parliament or its committees should be able to influence the policy or work programme of commissioners or ombudsman, or whether that should be a matter for the commissioners and ombudsmen themselves.

We can comment only on OSCR. It would be appropriate to influence only the statutory framework under which it operates, not its operational policy or work. Are members satisfied with that response?

Members indicated agreement.

The Convener: The next bullet point asks whether there should be an identical model of accountability for all commissioners and ombudsmen and, if so, whether we favour common budgetary controls as a key feature of such a model.

We did not take evidence on the matter, but common budgetary controls would appear on the surface to be reasonable and would bring an element of consistency.

Patrick Harvie: Sorry to be the one who is putting a spanner in the works, but our responses to some of the previous questions seem to indicate that OSCR is in a distinctive situation and is a different kind of body. It seems a bit much to accept

“an identical model of accountability”

for all ombudsmen and commissioners, given that we have dealt with one distinctive body and the Parliament might create other unique bodies in future.

The Convener: Would you be happy if we were to say that it is important that the Finance Committee explores all the issues to ensure that the models are robust and work?

Patrick Harvie: I would be happy for the Finance Committee to explore them.

The Convener: Can we agree that response?

Members *indicated agreement.*

The Convener: The next bullet point asks for our views on the adequacy of existing budgetary controls on ombudsmen and commissioners and on whether there is any alternative to the model of having commissioners and ombudsmen under the control of the Scottish Parliamentary Corporate Body.

We can comment only on OSCR, which is not under the control of the SPCB, although there is a requirement for it to report to the Parliament.

Patrick Harvie: So the answer to the second question is that there is an alternative.

The Convener: Indeed, and we are offering OSCR as an example of that alternative. Perhaps our response should say that there is an alternative, which is the model that OSCR is using. Are we agreed?

Members *indicated agreement.*

The Convener: The next bullet point asks:

“Is it possible to implement section B2 of the Paris Principles and retain suitable budgetary controls?”

Christine Grahame: Give your answer in 500 words.

The Convener: We have not considered the matter in detail, but it appears that section B.2 could apply to OSCR—do not ask me why. Section B.2 refers to bodies being independent of Government, not of the legislature.

Cathie Craigie: My colleague John Home Robertson has a good suggestion.

John Home Robertson: Mrs Craigie wants to go to Paris to find out more about it.

Christine Grahame: It is an extraordinarily difficult balance to strike. I am quite serious when I say that how a body maintains independence while the Government controls its funding is an almost philosophical question.

Patrick Harvie: It comes down to what we mean by “suitable”. If “suitable budgetary controls” means being able to deal with a case of mismanagement and put it right, it is possible to have that kind of control and maintain the Paris principles but, if having financial controls means a heavier, more detailed level of control, that would begin to threaten a body’s independence.

The Convener: Our best way out of this would be to put the ball back in the Finance Committee’s court and to suggest that it considers investigating suitability and how it is defined so as to get the balance right.

Christine Grahame: It is a fair point. Suitability is a subjective concept.

The Convener: Absolutely. Are members agreed on that course of action?

Members *indicated agreement.*

The Convener: The next bullet point states:

“The Executive has proposed setting up a Scottish Civil Enforcement Commission as an NDPB in the Bankruptcy and Diligence etc (Scotland) Bill to ensure its independence. Do you have any views about the establishment of Commissions by the Executive and are there alternative models that should be considered and how should budgetary control be exercised?”

We have not taken evidence on that. We might all have personal views on it and, if we do, we should make representations to the Finance Committee as individuals. The committee could perhaps offer as a suggestion—not a recommendation—for the Finance Committee’s consideration the model that was used in setting up OSCR, and could say that it could be tailored to suit any new body. Would members be happy with that?

Members *indicated agreement.*

Euan Robson: Forgive my lack of understanding of OSCR. All such bodies should have their own procedures for handling complaints about how the organisation operates or about it not doing certain things, particularly complaints from the public. I am not clear whether OSCR has one, but part of its reporting process should be an explanation of its complaints procedure, whether it has had any complaints and what it has done about them. That is good practice and it must have been considered somewhere in OSCR’s remit. Perhaps we should make a general point about it. I do not know whether we can make that point solely on the basis of OSCR’s experience, but I ask that some consideration be given to that.

The Convener: My recollection is that OSCR has an appeals procedure. We could add at the end of our letter a general point that raises the issues that you raise.

Do members agree that we should respond to the Finance Committee summarising the views that the committee has expressed today?

Members *indicated agreement.*

The Convener: Thank you for that.

Petition

Planning (Engagement and Consultation) (PE946)

10:00

The Convener: Agenda item 4 is on petition PE946, which was submitted on behalf of the Old Musselburgh Club. The petition calls on the Scottish Parliament to consider and debate the process of local engagement and consultation in local planning issues. Clearly, the issue has been discussed extensively during our evidence taking on the Planning etc (Scotland) Bill. We must be clear that we are unable to comment on the specific planning application to which the petition refers. As with similar petitions that the committee has considered, I invite members to agree to take into account the issues that are raised in the petition in our continued consideration of the Planning etc (Scotland) Bill and, on that basis, to take no further action on the petition.

Do members have any comments? Mr Home Robertson has a constituency interest, so he might have something to say.

John Home Robertson: The petitioner, Mr Watt, is a constituent of mine and Musselburgh racecourse straddles the boundary between my constituency and that of Susan Deacon. The racecourse has been there for nigh on 200 years and there are proposals for major developments that are obviously important for the town. The petition highlights the strong views against the developments, although it is important to acknowledge the equally strong views in favour of them. They are a good example of developments that need to be considered within the framework that the Planning etc (Scotland) Bill proposes. The bill should improve the way in which such controversial matters are handled. The application to which the petition refers has been called in by the Scottish Executive and will be considered soon at a planning inquiry—the sooner the better—which must be the right approach. I endorse the convener's recommendations. The relevant issues are covered in our consideration of the bill.

Christine Grahame: I, too, have a constituency interest, because part of the area is in the South of Scotland region. I know a lot about the area. I will not comment on the facts, but if the procedures that were followed were as detailed in the petition, I would have concerns. I presume that, after the planning inquiry, the petitioner will have the option of judicial review, if there is shown to be a conflict of interest, as narrated. I make no comment on the validity of the evidence, as it has not been tested, but I put on record the need for the issues that arise to be followed through. The petition shows

the need to follow the spirit as well as the letter of the new Planning etc (Scotland) Bill in relation to consultation and community concerns. The case may be an argument for a third-party right of appeal in such circumstances, if it is proved that some of the decision makers had a conflict of interest, in that they have an interest in the development. I cannot comment on whether that is a fact.

John Home Robertson: That is a very serious allegation.

Christine Grahame: I am not making an allegation. Be fair—I prefaced my comments by saying, “If the claims were to be established.” I have said throughout that the evidence has not been tested. However, if the claims are true, the case might be one in which a third-party right of appeal should have been available as an alternative to judicial review.

Patrick Harvie: The petition simply calls on us to consider and debate issues that we have considered and debated in some detail and will continue to consider and debate. In those debates, some members will make the point that the Planning etc (Scotland) Bill will improve the situation in respect of controversial developments, although others may not accept that. It is worth acknowledging that the petition brings together several issues that arise repeatedly about public involvement and the protection of heritage and common-good land. There have been cases in which well organised but shoestring campaigns

have gone all the way to the court in Edinburgh to resolve issues about common-good land. The planning system has failed those campaigners. Issues have also arisen in relation to the potential conflicts in the dual role that local councillors may have, for example when a council owns land and makes planning decisions about it. We should acknowledge that those issues come up repeatedly and that the petition raises them articulately.

The Convener: You rightly point out that the issues that are raised in the petition have exercised the committee for a considerable time and will, no doubt, continue to exercise us in the months that lie ahead. Is the committee content to take the course of action that I outlined earlier, which is to close our consideration of the petition but reflect on the points that it raises in our consideration of the Planning etc (Scotland) Bill?

Members *indicated agreement.*

The Convener: We will consider the issues as part of our consideration of the bill but take no further action on the petition.

As agreed earlier, we now move into private to consider agenda item 4, which is on the Planning etc (Scotland) Bill.

10:06

Meeting continued in private until 12:45.

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