

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 23 January 2008

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

2nd Meeting 2008, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Alasdair Allan (Western Isles) (SNP)

*Bob Doris (Glasgow) (SNP)

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*Johann Lamont (Glasgow Pollok) (Lab)

*David McLetchie (Edinburgh Pentlands) (Con)

*Jim Tolson (Dunfermline West) (LD)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)

Rhoda Grant (Highlands and Islands) (Lab)

Tricia Marwick (Central Fife) (SNP)

Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Robert Brown (Glasgow) (LD)

Patrick Harvie (Glasgow) (Green)

THE FOLLOWING GAVE EVIDENCE:

David Ferguson (Scottish Government Planning Directorate)

Alex Salmond (First Minister)

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Health and Wellbeing)

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Jane-Claire Judson

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 1

Scottish Parliament

Local Government and Communities Committee

Wednesday 23 January 2008

[THE CONVENER *opened the meeting at 08:30*]

Decision on Taking Business in Private

The Convener (Duncan McNeil): Good morning and welcome to this meeting of the Local Government and Communities Committee. The first item on the agenda is to seek the committee's agreement to take in private items 4 and 5. Item 4 relates to the committee's discussion on the evidence taken under item 2 and on how we take the matter forward in our draft report. Discussions on the possible contents of such reports are usually held in private. Item 5 relates to the committee's discussion on its approach to further work on the 2007 elections. Do members agree to take both items in private?

Members *indicated agreement.*

Planning Application Processes (Menie Estate)

08:30

The Convener: We move to item 2, which is the continuation of our evidence-taking session with the First Minister, Alex Salmond MSP. First Minister, I welcome you to the meeting and thank you for your attendance. We will move straight to questions, and I will give members who did not get a chance to ask questions at the previous meeting the opportunity to lead the questioning this morning.

Patricia Ferguson (Glasgow Maryhill) (Lab): Good morning, Mr Salmond.

Alex Salmond (First Minister): Good morning, Patricia.

Patricia Ferguson: I understand that in the days leading up to the call-in, you took advice from the chief planner. Was all that advice given over the telephone, or was any of it put down in writing?

The First Minister: It was given over the telephone. On Thursday 29 November, the date of the meeting of Aberdeenshire Council's infrastructure services committee, I asked for advice from the chief planner—in fact, the advice came from David Ferguson, as the chief planner was at a conference in Germany—on whether I was able to meet the Trump Organization as a constituency MSP. I had known hitherto that I was able to do that, because I had received that advice very early on in my term as First Minister and knew what the ministerial code said. However, I sought advice that day because I was not certain whether things had changed as a result of the infrastructure services committee's decision. The advice that I received from David Ferguson was that, as the ministerial code makes clear, I was free to pursue my role as a constituency MSP. I subsequently received a short phone call from Jim Mackinnon in Germany, in which he reiterated the same advice.

The following day, I received a further phone call from Mr Mackinnon, who had returned to Scotland and had spoken to Aberdeenshire Council. That call was about the standing of the infrastructure services committee's decision.

Patricia Ferguson: Did you at that time seek advice from the permanent secretary Sir John Elvidge about your dual roles?

The First Minister: No, but the advice was consistent with what I had previously been told. As we discussed at last week's meeting, once you are excluded from planning decisions under the ministerial code, you are basically free to pursue

all your duties and responsibilities as a constituency MSP. The one caveat was that I was advised not to make any public statements. The ministerial code does not actually say that you should not do so; it says that you should do so only in unavoidable circumstances and that you should make it clear that you are representing your electorate's views. However, I decided that, throughout all this, I should take a precautionary approach, as it were, and not make any public statements.

As I said, the advice that I got from David Ferguson and Jim Mackinnon was perfectly consistent with the advice that I had received hitherto. The reason for seeking it was to find out whether there had been any material change in the position regarding my ability to meet relevant organisations as a result of the infrastructure services committee's decision—in other words, I was looking to find out whether the matter had been immediately passed to the Scottish Government and whether that would have an effect on my ability to pursue my role.

Patricia Ferguson: Given that that advice had been reiterated on more than one occasion and given that this matter had been raised in Parliament, were you at all anxious about attending as First Minister the press conference at St Andrew's house to talk about the Trump application? Did you see any difficulty there, and, if so, were you given any advice about your status at that event?

The First Minister: Yes, I was given advice by the permanent secretary. I wanted to check that I could do that, and the advice was that I could because I would be talking about the 54 parliamentary questions on the subject that had been answered, and as First Minister, I would be able to defend and explain my Administration's record. The permanent secretary said that, under those circumstances, it was perfectly in order to hold the press conference in St Andrew's house. That was on 20 December, after the questions had been answered.

Incidentally, convener, I understand from Mr Swinney that approximately 100 questions have now been answered. That is all the parliamentary questions that have been lodged, including those that were lodged last week following the meeting of this committee.

Patricia Ferguson: I believe that there are still a number of outstanding freedom of information inquiries. I am sure that Mr Swinney will deal with those in the fullness of time.

Did the event cause you any anxiety about your dual roles?

The First Minister: It did not cause me any anxiety, but I sought advice from the permanent

secretary to see whether it was in order to hold the event, and I was told that it was because I would be explaining the statement and answers that had been given by Mr Swinney on behalf of the Government. Before those answers were given, it would have been difficult for me to hold such a press conference because I would have had nothing to defend or explain, or any knowledge of the parliamentary questions that were answered.

Patricia Ferguson: Last week, Mr Swinney and the chief planner alluded to their concerns about the perception of the planning application and Aberdeenshire Council's decision, and the signal that it sent out to the rest of the world. Were you concerned that there could be confusion over your dual roles?

The First Minister: I take a strong view on that. I have decided that, for every question that I answer, every letter that I write, every meeting that I attend and every telephone call that I make, I articulate my responsibilities as a minister and as a constituency member of the Scottish Parliament. I checked up on the number of letters and e-mails that I have had on this subject—it is 959. I have brought along examples of how they are answered. I can redact them suitably to take names out, if the committee so wishes.

The way to avoid any confusion is to make clear in every meeting, telephone call and letter the distinction between being a minister and being a member of the Scottish Parliament. That is what I have done. I have had no contact with anyone on the matter in which I have not articulated that.

Obviously, there are circumstances in which I must speak on the issue, such as during First Minister's questions. However, even then, I have tried to explain to the Parliament my role as a constituency MSP and my position as First Minister. No one who I have met or with whom I have discussed the matter could misunderstand those respective roles. I am not the first minister to be in the position of having a constituency interest in a major development, and I will not be the last.

The rules are pretty clear—I read them backside forwards very early in my time as First Minister. I think that I know exactly what they mean, and I have followed them to the letter and in spirit.

Patricia Ferguson: After the decision of the infrastructure services committee of Aberdeenshire Council, did you, as a constituency MSP, make any comment on your view of that decision?

The First Minister: I have never commented on the merits of the case. I have said—I said this in the Scottish Parliament the following week—that it seemed to me better that a decision of such magnitude should go to the full council. In fact, if I remember correctly, I was invited to say so by

Lewis Macdonald. It seemed unusual that a decision of such importance would be taken by a committee. However, I have never commented on the merits of the Trump application while I have been First Minister in any public or, indeed, private meeting.

Everyone would admit, including Aberdeenshire Council, that the council's process was less than ideal. I assume that that is why it has changed its procedures, following its meeting of 12 December.

Patricia Ferguson: Therefore, following the decision, the comments that were attributed to you in the newspapers—albeit without names being attached to the quotes—in which it was said that you might be furious about the decision are precisely that: ill-informed comment.

The First Minister: I have never told any journalist my view of the merits of the application. Indeed, I have refused to discuss the merits of the application with journalists because I took a precautionary view on the matter. I am pretty certain that no direct quote has ever been attributed to me that says whether I was for or against the application.

Again, I stress that that was not because the ministerial code says that ministers cannot express a view; it says that we can express a view, if it is unavoidable and if we are articulating the views of our constituents. Quite possibly, I could have expressed a view, but I chose—quite deliberately—not to do so. I followed that practice in every meeting, phone call and letter and certainly in talking to every journalist.

The Convener: I have a small point to make. It is heartening for the committee to know, as it is for the wider public, that interest in the development is not just party political or centred in Edinburgh and that you have had 950 declarations one way or the other—for or against, I suppose. That justifies the committee's interest in the matter.

Much has been said about the ministerial code. Our briefing points out that the code says, in bold:

"Ministers, and in particular the Planning Minister, must do nothing which might be seen as prejudicial to that process, particularly in advance of the decision being taken."

We accept your explanation, but the clear inference in planning legislation, as I understand it, is that perceptions about the way in which things are handled, and not only what is said, are very important in relation to the planning process. We may come to some of that later.

The First Minister: I accept what you are saying. However, it is important to understand that the ministerial code talks about two types of minister. Until I read the document fully and many

times, I accept that, prior to becoming a minister, I did not fully appreciate that.

If members look at page 23, they will see that the section from which you quoted comes under the heading "Planning Cases: The Planning Minister". The most important prerequisite for a minister with a constituency interest is for them not to be involved in the decision-making process, in order to avoid the perception of a conflict of interest.

If members look at the previous section on page 22 and the top of page 23, they will see the whole array of things that a constituency MSP who is a minister can do, as long as they are excluded from the planning decision-making process. In those circumstances, a minister who is excluded from the decision-making process can do things including leading deputations, articulating a view, turning up at public inquiries and advancing a view at public inquiries. If we turn to the next section, we see that any one of those things can be seen to be prejudicial to the process unless, of course, the minister is excluded from the decision-making process. Otherwise, in planning cases, they would be

"the Planning Minister (or ... any other Minister involved in the decision-making process)".

The ministerial code makes a clear and deliberate distinction between a minister as a constituency MSP removing themselves from the decision-making process—in which case, they can do virtually the full range of things that any MSP can do in the normal course of being a representative—and a minister who is involved in the planning process or who is, as the code says,

"the Planning Minister (or indeed any other Minister involved in the decision-making process)".

The distinction is not always appreciated. I have to confess that it is one that I fully realised only when I read the code, backwards and forwards.

08:45

The Convener: Does Patrick Harvie want to pursue that point—but only that point?

Patrick Harvie (Glasgow) (Green): I would be grateful for the chance to ask a brief supplementary on that point, convener. Thank you.

I am sure that we have all read the ministerial code and are aware of what applies in particular, though not exclusively, to the planning minister or ministers. However, First Minister, you are not a justice minister, a public health minister or a sports minister who has nothing to do with the process. In your view, ought a First Minister to do anything that could be seen to be prejudicial?

The First Minister: I do not think that anyone should do anything that is seen to be prejudicial, but of course—

Patrick Harvie: So that certainly applies to you.

The First Minister: If you look at the section that is headed “Planning Cases: The Planning Minister”, the first thing that it says might be viewed as being prejudicial is

“taking a decision, or being part of the decision-making process”.

Therefore, one removes oneself from the decision-making process. Arguably—

Patrick Harvie: Forgive me. I am asking whether the requirement to do

“nothing which might be seen as prejudicial”

applies to the First Minister.

The First Minister: The ministerial code does not specify the First Minister. It talks about ministers and constituency interests.

There are two things to say. First, one of the reasons why I have taken a precautionary view—which is not to articulate a public position on the merits of the application—is precisely because I am aware that I am the First Minister. Although the ministerial code does not specify that I must take that view, I thought that it was a wise thing to do. It is arguable—although, I think, debatable, and it does not apply to me—that a First Minister who was not the constituency MSP and was therefore potentially involved in the decision-making process would be, under the code, less free to act than a First Minister who is the constituency MSP and is excluded from the decision-making process.

That takes us into the realm—I saw the committee’s evidence-taking session last week—of the thoughts that the chief planner offered when he discussed the respective positions of the First Minister of Northern Ireland and myself on potential developments, or indeed, one could argue, the respective positions of myself and my predecessor, whom, if I remember correctly, Patrick, you criticised strongly on such matters.

Jim Tolson (Dunfermline West) (LD): Good morning, Mr Salmond. I take you back to the calls that were made on 3 and 4 December regarding the chief planner. Were you present when the Trump representatives called Jim Mackinnon to request a meeting?

The First Minister: I called Jim Mackinnon at the end of the meeting that I had in the Marcliffe hotel on 3 December with the Trump Organization. I asked him, in a reversal of what I had asked him a few days previously, whether it was permissible for him or somebody from his department to meet the Trump Organization. He said that it was

permissible as long as what was discussed was not the merits of the case but the procedures and timescales. On that basis, I handed the phone to George Sorial, who then requested and arranged the meeting.

Jim Tolson: So we are clear that you were in the room. You made that call and handed the phone to the Trump representatives. Did you speak to them afterwards to confirm Mr Mackinnon’s agreement to the meeting?

The First Minister: No. I spoke to Jim Mackinnon and asked him if he could meet. He said that he could. I handed the phone to George Sorial, who requested the meeting, and the conversation finished. It was a very brief phone call.

Jim Tolson: A very brief phone call—that is quite possibly true, First Minister, but what possible purpose could there have been to making that call if it was not to influence the subsequent actions? The organisation had access to highly trained and qualified advisers who know basic and often detailed information about the Scottish planning process. Therefore, it did not need to meet Mr Mackinnon.

The First Minister: The justification is twofold. First, at the meeting, but also in a statement that the Trump Organization issued, it said that it had been advised to seek meetings with me as the constituency MSP and also with the Government planners. It said that in a statement on 16 December 2007. Although the meeting that I had with the Trump Organization dwelt largely on the possibilities—[*Interruption.*]

I have been handed a copy of the statement, which says exactly that:

“On the advice of their legal counsel, meetings were requested with local MSP Alex Salmond and the Government Chief Planner Jim Mackinnon, which are clearly permissible and do not violate Scottish law or Ministerial rules. The purpose of those meetings was to seek clarification about legally available options relating to the procedural aspects of the planning process as no clear guidance had been provided by the local government officials.”

We should remember that the meeting that I had in the Marcliffe hotel with the Trump Organization, was as a constituency MSP. I am prepared to be helpful to the committee, because the Trump Organization has also talked about that meeting, therefore I do not think that I am breaching any confidences.

The meeting dwelt largely on the possibilities of Aberdeenshire Council being able to consider the application at a full meeting of the council. I had telephoned the chief executive of the council that afternoon to ask him for the latest information on the council’s deliberations on the matter—Alan

Campbell mentioned that in evidence at last week's meeting. I was able to update my constituency interest with the latest information that I had on that possibility.

However, the issue of appeal was also discussed at that meeting. It is true that one of the Trump Organization representatives said that they were adverse to appeal. The reason that they gave was reputational damage, which I spoke about last week. However, the question of call-in was never discussed at that meeting. The reason why it was not discussed is that I was not aware that it was an option. Incidentally, I suspect that the vast majority of people in Scotland were not aware that it was an option, either. I thought that the options were either that the council could find a way to consider the matter or that the matter could be pursued by appeal. Those were the options that I discussed with my constituent.

Jim Tolson: I appreciate that frankness, Mr Salmond. Some of the processes that were involved seem extremely odd. Do you accept that the only interpretation of your telephone call to the chief planner is that it was to influence him to take a meeting to influence the course of events?

The First Minister: Last week, the chief planner went through a substantial list of people from whom he has taken telephone calls. I understand that the chief planner is at Rosyth waterfront today with Mrs Helen Eadie pursuing her constituency interest. There was absolutely nothing untoward or difficult about asking the chief planner if it was permissible for him to meet Trump Organization representatives at that stage.

I point the member to a letter from Sir John Elvidge on 20 December, which states:

"I have ... received unambiguous confirmation from the Chief Planner that he has, at no time, been instructed by any party to act improperly. He has also made it absolutely clear to me that he feels he has applied the same rigour in this particular case, in terms of following due process and having regard to the expected standards of conduct, as he would do in any other planning case."

I imagine that I am included in the phrase "by any party". The chief planner was never asked to act improperly in any way.

Jim Tolson: Therefore, by trying to meddle in the decision rather than stay above matters as the First Minister, you could have endangered the whole process by leaving the decision-making process wide open to challenge. Do you accept that?

The First Minister: There are two things wrong with that. I do not accept the word "meddling". I am a constituency member of the Scottish Parliament and I was pursuing a legitimate constituency interest, as I hope you would do in similar circumstances. Secondly, I was there as a

constituency member of Parliament, not as First Minister—the reason why I was there is that I am a constituency member of the Scottish Parliament. I do not accept for a second that that should be described by anyone, least of all another member of the Parliament, as meddling. We must defend our rights to act on behalf of our constituents in the best traditions of being a member of Parliament.

Johann Lamont (Glasgow Pollok) (Lab): I appreciate the fact that you have taken the time to come back to the committee. I want to consider perception, which you will accept is important. All MSPs sometimes have difficulty clarifying for our constituents issues such as the limitations of our roles. You say that you took a precautionary view. Did you make any public statement on the planning application before you became an MSP?

The First Minister: I was asked that by—I think—Mr McLetchie last week. I said that the Trump application came up at a public hustings in Inverurie during the election campaign. All the candidates were asked about the issue and I answered the question. I said that I was in favour of the development with certain caveats, and I raised some issues.

What I said last week was:

"Prior to becoming First Minister, when I was not bound by the rules that bind me now, the issue came up at a public meeting in Inverurie, during the election campaign. I expressed support for the development, although I also raised a number of issues surrounding the development. That was prior to my becoming a minister."—[*Official Report, Local Government and Communities Committee*, 16 January 2008; c 511.]

The point is that, even if the meeting had not taken place prior to my becoming a minister and being bound by ministerial rules, I suspect that one could well argue—I certainly would—that my answer might come under the terms of what the ministerial code terms "unavoidable public comment". I do not know about Johann Lamont, but I would find it difficult to avoid answering such a question at a hustings during an election campaign.

Johann Lamont: I do not dispute that, but the point is that it would in that case be incredible to imagine that John Swinney, as the minister responsible for planning, did not know that you were in favour of the application.

The First Minister: I do not know what John Swinney knew or did not know. I know that I have never spoken to John Swinney about the merits of the case.

One of the aspects of this issue, which Alan Campbell drew attention to, is that even the local planning committee voted in favour of the development on the recommendation of its officials. I am talking about the Formartine area

committee. When it did so, it attached 54—I think—conditions.

The Convener: There were 62 conditions.

The First Minister: Thank you for that correction. The Formartine area committee attached many conditions. It was voting on outline planning permission, which should be borne in mind when we are talking about people expressing attitudes that are sometimes characterised as being either for or against the application.

The reason for taking the precautionary view is that I took the position—I was advised to do so, although the matter is not covered in the ministerial code—that, when I became First Minister, I should refrain from public comment on the issue. That is what I have done.

Johann Lamont: You took a precautionary view. We know that, sometimes, people have difficulty understanding our various roles. You said that you got clarification that you were able to meet representatives of the Trump Organization and use your ministerial car. Last week, you bristled somewhat when I suggested that there was an issue about your judgment. I suggest that there is a distinction between whether you are able to do something and whether it is wise to do it.

Last week, you accepted that you had never before in your parliamentary career secured a meeting for a developer within 24 hours of seeking it. You arrived at a meeting with representatives of the Trump Organization in a ministerial car, you met them, you phoned the chief planner while those representatives were there and you handed the phone over to them. In the circumstances, we could make a clear argument that, although you might have been able to do those things it was unwise to do so, in terms of the challenge of perception.

The First Minister: I hope that I did not “bristle” last week, Johann. I picked you up on your words because you characterised this committee’s inquiry—twice, I think—as being an investigation into my conduct. I merely point out that that is not, as the convener can confirm, within the terms of reference that the committee sent me. I was informed that the committee is inquiring into transparency in Government decision making. I was not bristling; I was merely pointing out what the terms of reference are.

In relation to use of the ministerial car, in answer to question S3W-7665 from Jackie Baillie, the permanent secretary, who examines the use of Government resources, has ruled that use of the ministerial car was appropriate and pragmatic.

In terms of the challenge of perception, I have ensured that at the start of every meeting, letter,

discussion and telephone call, I have stated the basis on which I was discussing matters and I have stated the respective roles of a constituency MSP and the First Minister. I am not sure whether other ministers, past or present, have done that, but I advocate that they do so. I have done that even in meetings with people such as Alan Campbell, who are well aware of the situation. Because I have taken a precautionary view, I have made that clear at the start of every telephone call on the matter. As I said to the convener earlier, I can provide the committee with examples of how I have dealt with the matter in correspondence. I am prepared to offer the committee sight of the 959 letters and e-mails—suitably redacted—that I have that pertain to the matter in one capacity or another.

09:00

Johann Lamont: There is an issue about judgment in relation to perception and the matter being open to judicial review. I am interested in knowing whether, given the controversy surrounding the meeting, you have reflected since then on whether it was wise.

I suggest to you that you met the Trump Organization because it was beginning to make it clear that it was not going to appeal, so it looked like the development could not go ahead. The organisation was saying that Scotland was “not open for business”. It must have been of concern to you, both as a constituency member and as First Minister, that it was relaying that message to the rest of the world. Although it may have been ill-judged for you to meet representatives of the Trump Organization, because it may have seemed that you were trying to intervene, you decided that it was worth your taking that risk, because it would enable you to get the Trump Organization to stay its hand until the matter could be resolved. Is it the case that you met representatives of the organisation to give them the message that Scotland is “open for business”? That is not a constituency MSP’s reaction, but a First Minister’s reaction.

The First Minister: You are wrong in all three parts of the question. First, I met representatives of the Trump Organization because they requested a meeting. They did so several times in a few days. The first request was made to my constituency office on the Thursday afternoon.

Secondly, I reject entirely your argument that the timing of the meeting was problematic. The timing of the meeting was dictated by the course of events in Aberdeenshire Council. I did not discuss with anyone the question of calling in the application. On the Monday night, I had no means of knowing that the application was going to be called in on the Tuesday. I could not tell in

advance that the meeting was to take place on the night before a thing happened when I did not know that that thing was going to happen.

Thirdly, at last week's meeting of the committee I made general comments about perception and the wider Scottish interest. Other people have made similar comments. Those are important issues, but they are not why I met representatives of the Trump Organization late on the Monday afternoon in the Marcliffe hotel: I met them because they requested a meeting. The hotel was a convenient and appropriate place at which to meet them.

Johann Lamont: You may not have known that the application was to be called in, but you knew that a solution was needed. It is hard to imagine that your reaction to what had occurred and your willingness to meet representatives of the Trump Organization, in spite of how others might perceive that and even though it opened up the risk of judicial review, were not related in part to your position as First Minister and to your wanting to respond to the challenge by an American organisation—last week Mr Swinney told us that he needed to be briefed because the issue was live in the American media—that Scotland was “not open for business”. If that were not the case, you might have taken the precautionary approach of advising the Trump Organization on the phone to speak to the chief planner on the phone.

The First Minister: The reason for the meeting was that the Trump Organization requested a meeting. It could be argued that to refuse a meeting in those circumstances would not be in line with the “Code of Conduct for Members of the Scottish Parliament”, by which we are all bound. That code tells members that they must be accessible to their constituents. I would be dumbfounded if, after being asked for a meeting in such circumstances, an MSP were not prepared to proceed with one.

Johann Lamont mentioned the wider interest. The timing of the meeting that I was asked to have was dictated by what was happening. As I mentioned, I have received 959 pieces of correspondence and e-mails on the application in one capacity or another. If the committee wishes, I will check the exact figures, but before the meeting of the infrastructure services committee of Aberdeenshire Council my total mailbag on the issue consisted of about a dozen indications of interest by letter or e-mail. After the meeting of that committee, there was an absolute deluge of correspondence, and of interest and comment, from all directions. It is important under such circumstances that a constituency member of Parliament do his job. In terms of the wider perception of Scotland, those are important

issues, but that is not why the meeting on the Monday afternoon took place.

Alasdair Allan (Western Isles) (SNP): A number of members have mentioned perception, and you have mentioned your correspondence a couple of times. Will you give us an indication of what would be a regular reply—I do not suggest a standard reply—to all that correspondence?

The First Minister: I am prepared to offer that to the committee if that is considered to be appropriate. I have brought along two basic responses because, as the constituency MSP, I obviously get letters and e-mails from constituents, but I also got letters and e-mails from everybody else in Scotland and beyond. There are templates for responses to both, unless there is something specific in a letter that would recommend its being passed on to appropriate ministers. I have brought the templates along—the key point is the clarification that they give to people writing in as regards the respective roles of constituency MSP and First Minister.

The key paragraph in the letter to a constituent that I have here says:

“As the constituency MSP, I am debarred from having any decision making role in the planning process. Equally, as a constituency MSP I have the right, indeed, the obligation ... to meet or discuss the issue with any legitimate constituency interests. However, as First Minister, I have been advised to make no public statement on the issue lest it be interpreted as being in favour or against the proposed development.”

The important point, given my experience of the matter—maybe in the future this could be recommended in the ministerial code—is what ministers do when they act as constituency MSPs. The idea that every piece of correspondence, meeting and phone call should make those things clear—although it does not actually tell one to do that in the ministerial code—is a very sensible precautionary approach. To refer back to Johann Lamont's question, the precautionary approach that I took was not to make a public statement.

Alasdair Allan: You mentioned how the situation developed over time. Was that reflected in the response that was given? Once the application became a matter for John Swinney, did you have to change the way that you responded, or was the same form of words adequate?

The First Minister: The vast majority of the 959 responses, excepting only—let us say—12 or 20, have been given since the end of November. Although the matter is of substantial interest locally, nationally and—arguably—internationally, it had not provoked any great deluge of correspondence to me until the decision was made by the infrastructure services committee. Until that point, people believed that it was moving its way through the proper processes of

consideration. It was only when it came to a logjam, or car crash, that there was a sizeable interest and a deluge of correspondence. The templates are really based on what I said afterwards, but there is no material difference between those and the dozen or so letters that I sent before the end of November. They were all sent after John Swinney had taken on the role as the planning minister.

Alasdair Allan: Clearly, you are not responsible for the oddity of the planning process in Aberdeenshire, but did people raise with you the issue of a perceived oddity or unusualness in the process that Aberdeenshire was pursuing?

The First Minister: It was certainly something that was raised with me in Parliament—by Lewis Macdonald, on 6 December. If you look at that reply, I say that most councils, and most people, believe that decisions of such significance should go before a full council meeting, but Aberdeenshire had adopted its own procedure. Later, of course, on 12 December it changed that procedure.

I said that there are lessons for councils to learn and that, indeed, there are wider lessons for Scotland to learn, regarding the planning process—both of those things are true. Aberdeenshire Council has already changed its procedures in response to the feelings of councillors. Scotland will learn lessons—not particularly from the planning application that we are discussing, but from many planning applications. Addressing important issues relating to the planning process in Scotland is part of what Parliament and the Government do, and it is important that the country arrives at a situation in the not-too-distant future in which the planning process is seen, because of its speed and certainty, as a comparative advantage as opposed to a comparative disadvantage for Scotland.

The Convener: I should formally respond to the offer that you have made on several occasions to provide copies of correspondence, including e-mails, to the committee. We would welcome your doing so; indeed, we would welcome any available paper trail—involving e-mails, briefings, and exchanges with ministers, for example—that relates to the decision-making process. We hope that you will also share with us information on whether a judicial review has been considered and the legal advice that you have received, which are issues that have been going around.

The First Minister: I have received no legal advice about a judicial review. However, I know from evidence to the committee that Aberdeenshire Council sought legal advice. The legal basis on which the Government took decisions has been made clear to Parliament. Therefore, that has been covered in evidence.

On other material, I understand from Mr Swinney that 30 freedom of information requests have been submitted. Those requests will be answered as soon as possible, but a wide-ranging trawl through many aspects of government will have to be involved. A substantial effort has been put into answering around 100 parliamentary questions in advanced time in order to help and facilitate the committee's discussions.

The Convener: I take up your offer to pass on information, and of course—

The First Minister: I can pass on the letters today, convener.

The Convener: Absolutely. However, we are interested in the paper trail in general rather than in only one section of it.

Bob Doris (Glasgow) (SNP): Good morning, First Minister. At last week's committee meeting, much was made—as it has been at this meeting—of whether using the ministerial car was appropriate. You took advice on using that car; its use was deemed to be both appropriate and pragmatic. Some committee members may deem your buying an all-day bus ticket for travelling around Gordon as a constituency MSP to be more appropriate, but I would like to explore a bit more the relationship between your being a constituency MSP and First Minister.

First, you have said that whenever you dealt with the Trump issue, you were clear that you were acting as the constituency MSP for Gordon. I can give an everyday example of where such clarity is always provided. Every day, I must clarify that I am a list MSP for Glasgow. I have no issue with having to do so, other than that I would much rather be a first-past-the-post MSP for Glasgow. When you met representatives of organisations, was there a lack of clarity about your acting as the constituency MSP for Gordon?

Secondly, during last week's evidence session, the convener said that perhaps you should have passed the issue to a list MSP to deal with. As a list MSP, I would, in some ways, be quite keen on such things happening, but would your constituents in Gordon have been satisfied if you had passed the issue on to a list MSP?

The First Minister: I confess that, in my parliamentary career, I have been tempted to pass on certain constituency cases to list MSPs, but I have always resisted the temptation to do so, unless the constituent expressed the view that I should. Indeed, I have just provided a constituent, at that gentleman's request, with a comprehensive list of the names, addresses, and office and Scottish Parliament phone numbers of every constituency and list MSP in North East Scotland. However, if a constituency MSP is asked to attend a meeting on a very important topic that affects

their constituency, they have a responsibility to respond to that request. Constituency MSPs have such responsibilities. I do not think that a constituency MSP can hand over to a list MSP responsibility for a matter if it is clearly the duty and responsibility of that constituency MSP to deal with it.

Bob Doris: I have one further question. If the infrastructure services committee had taken the converse decision to approve the Trump development, and you had been contacted by objectors, would you have met them just as speedily? If they had sought access to the chief planner, would you as constituency MSP for Gordon have made a telephone call on their behalf?

09:15

The First Minister: Yes, I would. I met objectors to the proposal timeously, although at that time there was not the same urgency because of the point that had been reached in the process. I met them on Friday 19 October before the meeting of the Formartine area committee. I met them in good time for that meeting because they wanted specifically to talk about the processes of Aberdeenshire Council.

Sustainable Aberdeenshire, which was one organisation that I met in that period, was formed only in late September. At that stage—although I suspect that it has rectified this since—it did not have an immediate working knowledge of the Aberdeenshire Council planning system. I must say that many of us did not know as much about the Aberdeenshire Council planning system as we thought, but most of us understood nonetheless that the proposal would go to the Formartine area committee.

I explained the processes of Aberdeenshire Council as I understood them. Indeed, I gave the objectors the names and numbers of all the councillors in the Formartine area committee, as they had the right to lobby and express views to them if they so wished. One issue that came up at the meeting was an objector's right to speak directly to the area committee—something, incidentally, that I approve of.

In my role as constituency MSP, it is my job to help people on all sides of a debate, and it is my responsibility to clarify, as far as I can, the processes that are involved. However, for the reasons that I previously stated, at no meeting—whether with the objectors or developers—have I ever expressed a view for or against the development. I have deliberately not done so, and at each meeting I have expressed and clarified to the people concerned why I have not been able to

do so, following the precautionary approach that I have taken throughout the process.

David McLetchie (Edinburgh Pentlands) (Con): Good morning, First Minister. Last week, in his opening statement, the chief planner, Mr Mackinnon, said with reference to his telephone conversations with you on 29 and 30 November:

“I called Mr Salmond on the afternoon of 30 November to update him on the procedural options. Over the course of the weekend, I thought further about the options.”—[*Official Report, Local Government and Communities Committee*, 16 January 2008; c 451.]

He went on to describe how he came to the conclusion that call-in was the desirable course of action, which was eventually recommended to and adopted by the minister, Mr Swinney.

This morning, you have said that, when you met the Trump representatives on 3 December, you did not know that call-in was an option. Do I take it that the chief planner Mr Mackinnon did not advise you on 30 November, when he was supposedly updating you on the procedural options, that call-in was one of them?

The First Minister: That is correct. I have thought quite a lot about that. It is certainly true that Jim Mackinnon's conversation with me on 30 November was about what he had learned about the Aberdeenshire Council processes.

When I spoke to the chief executive of Aberdeenshire Council, Alan Campbell, on 29 November, he told me that there had been an immediate and overwhelming body of councillor opinion—all the group leaders had been in to see him just a few hours after the infrastructure services committee meeting—in favour of holding a special meeting of the council. Indeed, a press statement was issued on Friday 30 November by the council leader, Anne Robertson, in which she said that there would be a special meeting of the council on 12 December with a view, as she put it, to keeping the application alive.

When Jim Mackinnon phoned me on 30 November, he explained what he had learned from Aberdeenshire Council about the process. Even at that stage, he expressed doubt about whether it was as clear cut, and as plain sailing, as some people believed it was. On 30 November, there was a general feeling across the council and across press and public opinion in Aberdeenshire that what might well happen is that the council would call another meeting of the full council and revisit the decision of the infrastructure services committee. Jim Mackinnon expressed a cautionary note to me that that might not be as clear cut as others were perhaps arguing it was.

Incidentally, I have Anne Robertson's statement here, which was included in a news release that

was headed "Special meeting of Aberdeenshire Council announced". It quotes her as saying:

"The public response has been quite overwhelming and we must listen carefully to the views of the people who elected us. This development has the potential to be an extremely important diversification of our economy and I personally will do all I can to keep the application alive."

The news release says:

"The public meeting of full council will take place on Wednesday, December 12, at 10.15am".

Jim Mackinnon talked a bit about that, but at that stage, and certainly in all conversations that I had with Jim, it was about what I could do as an MSP or about the procedures that I thought were available, which were either the council looking at the matter as a full council, or, indeed, the developer making an appeal.

David McLetchie: Do you not find it slightly surprising that the Government's chief planner, when briefing you on the procedural options, managed to omit any reference to the course of action that he eventually followed? He subsequently told the committee:

"The simplest approach, which would give certainty to all parties and interests on the process to be followed, was to call in the application."—[*Official Report, Local Government and Communities Committee*, 16 January 2008; c 451.]

Is it not slightly odd that the chief planner, when briefing you on the situation, did not say to you, "Well, obviously, Mr Trump can reapply," or "Obviously, Mr Trump can appeal," or "There's this wizard wheeze—as long as they haven't signed the decision letter, we can call it in"? Do you not find it slightly surprising that the chief planner did not tell you in simple terms that that was an option?

The First Minister: No. When Jim Mackinnon gave evidence at last week's meeting, I think he argued that he thought about the matter over the weekend, so perhaps it is not surprising that he did not refer to the call-in option on 29 and 30 November, as that was before the weekend.

After that, why did Jim Mackinnon not say that to me either in the phone call that I made to him on 3 December or, indeed, in the courtesy phone call that he made to me on 4 December? I suspect that he deliberately did not say it because at that stage he was forming in his mind what the advice was going to be to the minister, and he did not consider it appropriate to tell me or to give me advance warning of what that advice was going to be.

Incidentally, I do not think that, if they had been looking at this issue, many people in Scotland would have realised that call-in was an option—maybe David McLetchie, with his legal training and experience in such matters, would have been different. Certainly, from what I knew of the

processes, my attention was focused on there being either a reconsideration by Aberdeenshire Council or an appeal by the developer. Is that too surprising? I am the First Minister of Scotland, not the chief planner. By definition, I hope that nobody in Scotland knows more about planning law and procedures than Scotland's chief planner does. Is that not as it should be?

There is one last thing. There was some suggestion last week—I cannot remember by which committee member—that it is not the chief planner's job to find solutions for problems that occur elsewhere. I think that that is how it was expressed—that it is not for the chief planner to find a solution. I disagree. I think that it is fundamental that we have public servants in Scotland who, in the national interest, find solutions and ways to solve problems, and who are not frightened to take initiatives in order to do that. For people in public service, the easiest thing in the world is to do nothing, to disclaim any responsibility, to allow bad things to happen and not to take the initiative. On the evidence that I heard last week, the actions not just of our chief planner but of Alan Campbell, as Aberdeenshire Council's chief executive, are in the finest traditions of public service. We as a society and as politicians should occasionally applaud people for solving problems and taking initiatives rather than look for reasons—I am not suggesting for a second that David McLetchie would do this—to decry them for doing so.

David McLetchie: On the people who knew that call-in was an option, Mr Swinney claimed in his evidence last week that he knew about the option in advance of his two five-minute telephone conversations with Mr Mackinnon before he took the decision. We also learned from Mr Mackinnon's evidence last week that the Trump Organization had engaged a very expert planning lawyer from Dundas & Wilson and Mr Mackinnon assured us that the Trump Organization's legal representatives certainly knew that call-in was an option. You might not have known that it was an option, but two crucial people certainly did know that it was, yet it was apparently not part of your conversation. I will move on to something else.

The First Minister: David—

David McLetchie: You may reply to my factual observation.

The Convener: Briefly, First Minister.

The First Minister: Just out of interest, would David McLetchie have known that call-in was an option?

David McLetchie: No—I would not have known that. I would know that it was generally possible to call in an application, but I would not know, because I do not have the expertise, that it was

possible to call in the application in the little gap between making the decision and signing the letter, which is why I expressed surprise that Mr Swinney claimed such legal knowledge that he apparently knew that such a call-in was possible.

I will move on to other questions that follow from our discussion. Last week, I asked you whether your meeting with the Trump Organization had ever been denied by any spokesman acting on your behalf in response to any inquiries from the media, and you said, "Absolutely not," and referred to an e-mail that was sent to the *Aberdeen Evening Express*. Have you had an opportunity to reflect with your spokesman on your answer and do you wish to change it?

The First Minister: Yes—I have had such an opportunity and I will certainly elaborate on my answer. It has been pointed out to me that, on 4 December, my civil service official spokesperson told a briefing after a Cabinet meeting that he had no knowledge of my meeting the Trump Organization.

David McLetchie: Is that Mr Geoghan?

The First Minister: Yes—that is Mr Geoghan. I did not know about that until yesterday, but that is as it should be, because he was answering for me as First Minister. He had no knowledge that I had met the Trump Organization on the previous day as a constituency member of the Scottish Parliament. I believe that that was explained to the journalist concerned the next week and was perfectly accepted. The note of that subsequent briefing says that the First Minister's official spokesman

"replied that he was unaware of the meeting at that point and told the journalist that any meetings between the Trump organisation and the First Minister would be done so in Alex Salmond's capacity as MSP for Gordon."

In my discussion with David McLetchie last week, I referred to what I knew about—the e-mail correspondence—because I authorised it on Thursday 6 December, when we were asked at 10.17 in the morning whether I had met the Trump Organization. A sequence of e-mail correspondence that I authorised was finalised at 11 am that day. The question that was asked was whether I had met the Trump Organization on the Tuesday afternoon, which I had not. If we had wanted to rest on an exactitude, we could have said, "No, I didn't meet them on Tuesday afternoon," but I chose to authorise a statement that said:

"As a constituency MSP I have met many people on all sides of the debate as I am duty bound to do ... under the Scottish Parliamentary code and on Monday I met members of the Trump organisation in Aberdeen.

As First Minister I am excluded from the planning decision process and cannot make a public statement

either for or against the development which is being decided by other Ministers."

I was, on request, totally open. As I said, that is what I had knowledge of. Incidentally, you might find the second paragraph familiar, because I use it in letters, meetings and everything else. Even in a public statement, I was clarifying my respective roles as First Minister and constituency MSP.

09:30

David McLetchie: We have heard about Mr Geoghan's position. Has Jennifer Dempsey, who I believe is one of your special advisers, ever denied in response to press inquiries that you had such a meeting?

The First Minister: Not to my knowledge. In fact, this e-mail correspondence is based on a request made to Jennifer Dempsey by Mr David Ewen of the *Evening Express*.

David McLetchie: I am talking about prior inquiries, not the inquiry by Mr Ewen.

The First Minister: Not to my knowledge.

David McLetchie: Would you like to verify that with Ms Dempsey and confirm that to the committee?

The First Minister: I certainly will, but I should point out that this is what I knew about when I spoke to the committee last week.

David McLetchie: I appreciate that. Ms Dempsey, one of your special advisers, is the author of the correspondence with Mr Ewen of the *Evening Express*. However, the meeting was conducted in your capacity as constituency MSP. Why is the special adviser to the First Minister issuing statements to the press on meetings that you have in your capacity as constituency MSP, not as First Minister?

The First Minister: She asked me what to do about the request; she is, after all, a spokesperson for me.

There are two ways of doing this. Either I say, "Look, I'm a constituency MSP. Go to my constituency office," or—as is perfectly allowable and is, indeed, currently done on a range of issues—I can make the respective roles of constituency MSP and minister clear in the response. It is analogous to what happens at First Minister's question time. If you asked me a number of questions—say, on this issue—at question time, I could say, "I'm not going to speak to you about this, because anything I've done has been in my role as constituency MSP." I do not appear at First Minister's question time to defend my role as a constituency MSP. The better approach—which I think is perfectly feasible and defensible and many examples of which I am sure

can be cited with regard to other ministers and First Ministers—is to respond but to make it clear what I do as a First Minister and as a constituency MSP.

Incidentally, I am quite happy to provide the committee with the e-mail exchange, which does exactly that: it explains what I do as First Minister and what I do as constituency MSP. If I did not do that—and you should remember that we are not in control of the letters and requests that we receive—I might in these circumstances be accused of deliberately not answering to disguise the issue or what I had done. It is much better to give a proper answer and to define the responsibilities of a constituency MSP and First Minister.

My very final point is that, of the 959 e-mails, letters and pieces of correspondence that I have mentioned, 178 came into my constituency office. The vast bulk was sent to central Government. I do not think that it is either feasible or proper to refuse to respond to those letters simply by saying, “Okay, you’ve written to me as First Minister, but I’m the constituency MSP, so write to my constituency office.” The proper way of doing this—and I have checked this absolutely—is to respond but to make it clear what I can do as First Minister and what I can do as constituency MSP. I take the same attitude to that inquiry from the press. If I had refused to answer that inquiry on the basis that I was acting as the constituency MSP, not as the First Minister, people might have said that I was trying to avoid the question and that I was being less than totally frank.

David McLetchie: Can I just—

The Convener: No, I am sorry. Other members want to get in, and I would like to pursue that issue myself.

First Minister, you have made it clear that throughout this matter you have acted solely as constituency MSP, not as First Minister. Indeed, you have stated that you felt that you had a bounden duty to act as a local MSP and that, as a result, it was entirely appropriate for you to get involved in planning matters that affected your constituency. Is that a fair summary of your position?

The First Minister: Yes, in so far as it goes. I have put other things into that position, such as explaining the ministerial code and what it allows a constituency MSP to do when they are also a minister. I do not disagree with anything that you have said, but I have said other things as well.

The Convener: I will take that as a yes.

So there is no bounden duty on you as First Minister to become involved in live planning applications.

The First Minister: No. The bounden duty to which I referred is that of a constituency MSP to respond to a constituency interest. That is how I regard that duty. The duty of the First Minister does not lie in the terms of the ministerial code or the parliamentary code. For example, my predecessor was criticised for this, but we should not get ourselves into the situation where the First Minister or the economic minister is not regarded as having the responsibility to generally promote Scotland’s economic development. During last week’s evidence session, I was rather taken with the sharp contrast that was drawn by the chief planner between the activities of the First Minister for Scotland and the response to them, and those of the First Minister for Northern Ireland. That is something we have to think about.

The Convener: Thankfully we are not in Northern Ireland; we are dealing with this problem here. Your earlier evidence would seem to indicate that you agree that, as a minister, you are less free to act and become involved in live planning applications.

The First Minister: It is not quite like that. Because the constituency MSP is excluded from the planning decision-making process, he is more free to act than a minister who would be involved in the decision-making process. In my view, that is the correct reading of the ministerial code. Because an MSP is excluded from the planning process, they are more free to act than a minister would be. In short—I described this last week and I stand by it—the ministerial code says that once a minister is excluded from the decision-making process, they are basically free to do what a normal constituency MSP would do, with the one caveat that it is suggested that they should be careful about their public statements.

The Convener: So there are clear differences between being an MSP and being a minister. I appreciate your answer.

If that is the case, why did Mr Swinney admit in a recent parliamentary answer that you had involved yourself in a live planning application for the Aviemore highland resort?

The First Minister: I involved myself in that planning application by making inquiries about it because I was written to by a cross-party group of members of the Scottish Parliament. I can furnish the committee with the letters and correspondence. Not only was I written to, I was buttonholed by a number of those members in the chamber and asked to reply to their letters as a matter of urgency. That is what I did.

The Convener: Do you see becoming involved in live planning applications as part of your role?

The First Minister: Responding to MSP queries, as I did in the Aviemore highland resort

matter, was perfectly proper and above board and I would hope that any First Minister would do that.

The Convener: How do you see yourself having a role in live planning applications? Does someone have to write to you as First Minister, or pass a letter on? Is it only when MSPs ask you? Is it through having a quick chat in the corridor? What criteria determine when you get involved?

The First Minister: The constituency MSP—

The Convener: We are talking about your role as a minister.

The First Minister: I am coming to that. A constituency MSP who is also a minister is bound by the ministerial code, but I believe that they also have a duty to represent their constituents. If any MSP writes to me about a matter that is causing them enormous concern, I would hope that I would reply to them timeously and help them if I possibly can. Certainly, if MSPs asked me to get involved in an issue, that would be an occasion when I would have to get involved. If we did not do that, the whole process of ministerial meetings and MSPs writing to ministers would be rendered redundant.

In more general terms, we should not get into the position where a minister, whether the constituency MSP or not, is not free to argue for the best economic development of Scotland, while keeping in mind the stipulations that are set out in the ministerial code about what the planning minister or other ministers who are involved in planning decisions can and cannot do. Given the response of some people to the ministerial code, it seems that some sentences in the code might be better expressed. Some people clearly misunderstand the difference between being a constituency MSP and a minister and being somebody who is involved in the decision-making process. However, pages 22 and 23 of the code deal exactly with the circumstances under discussion. That is why I have been keen right through this process to abide by both the letter and the spirit of the ministerial code. That is exactly what I have done.

The Convener: Big questions have arisen to do with your involvement in some organisation, and you have answered those questions as a constituency MSP, but we are considering your role as First Minister in the light of the ministerial code. You have not answered the questions on the criteria that determine how you would get involved.

The First Minister: Convener, with respect, I have said that one criterion would be—

The Convener: We just drop you a line and have a chat, and you become involved in live planning applications.

The First Minister: I would not express it as you have done, but thank you for helping me. I would express it as follows: if I am the constituency MSP, I have a bounden duty. That is for the reasons that I have already stated. As First Minister, I have a duty—like any minister—to respond to MSPs who ask questions. That is perfectly legitimate and has been done very many times by ministers. It would be shocking if ministers did not respond to MSPs' queries. There is a general duty within the context and the confines of the ministerial code that must be followed. Scottish ministers should be promoting the best interests of the country, as long as they stay within the requirements of the ministerial code—which are there for a purpose.

The Convener: There are certainly some questions to answer, although we may not have time to pursue them. You became involved in a live planning application in Aviemore and you spoke to the chief planner on 7 December about Aviemore. What did you say to him?

The First Minister: I can certainly help the committee by answering that. I asked the chief planner about the status of the application and when it was coming up. I asked him for information so that I could answer my correspondence with MSPs.

I am perfectly happy to help the committee by providing that information, if you request it. I was not aware that you would move on to the Aviemore application, but I can assure you that my activities in relation to the Aviemore application or to anything else would follow precisely the stipulations of what I can and cannot do according to the ministerial code.

The Convener: The Aviemore question was one of those that were included in John Swinney's statement and your statement; a list of questions were answered at that point. Did you ask the chief planner to do anything as a result of the conversation at Aviemore?

The First Minister: I was not aware that you were going to pursue the Aviemore question, but I certainly kept within the ministerial code in all dealings. I asked the chief planner for information on the status of the Aviemore application and I asked him about the relevant bodies. I did that so that I could reply to the MSPs who had asked. Anything that I have done about Aviemore or anywhere else stayed exactly within the confines of the ministerial code.

The Convener: Did the chief planner speak to any other of the statutory consultees? Did he speak to the national park planning authority about the application? Did he update you on those discussions?

The First Minister: I think that you had better ask the chief planner those questions. If you wish

to put any questions about this or any other matter to me, I will be happy to assist you. However, you will understand that I have come along to an evidence session about the Trump matter. Had you given me notice that you wanted to ask these questions, I would have had the information available. I want to be exact in all replies to the committee. I therefore suggest that you send the questions on Aviemore to us. We shall answer you as best we can. However, I give you an absolute assurance that anything that I have done in relation to Aviemore will have been perfectly in line with the ministerial code and with what I am entitled to do as First Minister in response to queries from constituency MSPs on a cross-party basis.

The Convener: First Minister, I think that you should be expressing disappointment to the people who prepared your brief and not expressing disappointment about the questions that you are being asked.

Did you or the chief planner speak to the principal developer at Aviemore? Have you spoken to him?

The First Minister: I have certainly not spoken—but, who is the principal developer?

The Convener: Mr Donald Macdonald. I thought you would have known that.

09:45

The First Minister: I have spoken to Mr Donald Macdonald in the past, but I have not spoken to him for some time—certainly not since I received the letters from the constituency MSPs. I know that you do not want to conduct a series of hearings on all planning applications, but if you ask a series of questions, you will get a series of answers. Anything that I have done has been within the terms of the ministerial code.

The Convener: I understand that it may be difficult for you to answer the questions that we are asking this morning, because you have moved from the position of asserting that, on Trump, you acted only as a constituency MSP to admitting that you have intervened in another live planning application in your role as First Minister.

The First Minister: I am not admitting anything of the sort. On the Trump application, I have done my job as a constituency MSP and was not involved in the decision-making process. On Aviemore, although I am not the minister with responsibility for planning, I acted as First Minister in response to letters that I received from a cross-party delegation of MSPs. Everything that I have done on that application is certainly within the terms of the ministerial code. If the committee sends us a letter on the matter, that will be

explained to it. I have done absolutely nothing that I hope any First Minister or minister would not have done in the same circumstances at the request of MSPs. One of the criteria for ministers responding is that MSPs have asked them to do so. That is exactly what ministers are doing.

Alasdair Allan: I have a question about procedure. Are we planning to extend the remit of this agenda item, the timeframe for it, or both?

The Convener: We are seeking to establish whether the process has been damaged. We are considering related issues in the planning process and whether ministers are prepared to intervene in live planning applications. Today the First Minister has indicated that he contacted the chief planner regarding the Aviemore proposal and that he may have spoken to the developer. Something very similar happened in relation to the Trump application, which we are investigating. The issue of Aviemore was also raised in the questions attached to the statement that Mr Salmond, the First Minister, and John Swinney, the Cabinet Secretary for Finance and Sustainable Growth, delivered at their press conference. It is mentioned in our briefing papers and we are entitled to ask questions about it.

The First Minister: I will respond in a number of ways. First, I am entitled to speak to the chief planner to request information on a planning application when constituency MSPs ask me to do so.

Secondly, when you asked me a question about which I had no foreknowledge, I pointed out to you that I have not spoken to Mr Donald Macdonald since the MSPs made their request. I did not need to, because I was informed of the processes so that I could reply to the MSPs, which I did.

Lastly, I have the remit for the committee's inquiry in front of me. You may interpret that as widely as possible, but it states that the committee agreed

"to take evidence on all aspects of the Scottish Government's handling of the planning application for the Menie estate in Aberdeenshire and to examine the decision making process of ministers and officials, the legal advice relied upon and the transparency of their actions."

I should have thought that that would be sufficient unto the day but, to be helpful to the committee, I will be delighted to answer in correspondence any further questions that members have about any other planning applications. However, I assure you that anything that I have done is within the terms of the Scottish ministerial code.

The Convener: We shall see. If we have achieved nothing else in the hours of evidence that we have taken, we have shown that MSPs do not need to speak to the First Minister to gain access to the chief planner. I wonder why they did

not exercise that right in this case. There are questions that need to be answered in relation to the planning process for the Trump and Aviemore applications.

Kenny Gibson has made a late bid for a question. We will hear from him before taking questions from guest members.

Kenneth Gibson (Cunninghame North) (SNP):

This morning you have spoken a lot about the precautionary principle. Was your considered approach influenced in any way by the way in which the previous Deputy First Minister and the previous Scottish Executive handled relations in respect of the Aberdeen western peripheral route?

The First Minister: I know about the western peripheral route issue, which illustrates how public comment is sometimes a difficulty for ministers. When I received advice that it was best not to make public comment, I understood why that advice should be held to and that is what I have done throughout the process. That was my precautionary approach.

Patrick Harvie: At the end of the previous evidence-taking session, I asked about the implications of this affair for the planning system. I will pursue that now. Mr Swinney told us that his first objective in making the decision that he did was to preserve the

“integrity of the planning system”.—[*Official Report*, 16 January 2008; c 489.]

You spoke about getting 900 letters and e-mails, or however many there were. I should think that every MSP has received letters and e-mails about the matter. Judging by those that I have received, the perception of the correspondents is not that the planning system’s integrity is being preserved, but that it has been bought and sold for Mr Trump’s gold. How much damage do you think has been done to the public’s perception of the planning system as a result of what has happened and how much more damage would be done if the matter was resolved in any way other than by holding a public inquiry?

The First Minister: On the second aspect of your question, it is for the planning minister to decide on the way forward.

On the first matter, whatever side of the debate you are on, there was and is a real difficulty in explaining the circumstances in Aberdeenshire. I think that around 45 councillors might never have had a vote on the development. That would have sent a strange message about the way in which important planning applications are dealt with. We know that Aberdeenshire Council considers that to be true, because it has changed its procedures to ensure that that sort of thing does not happen again. Otherwise, it would have meant that there

was a considerable problem in the nature of the planning process in Scotland.

As I understood the evidence last week, when the integrity of the planning system was referred to, it was specifically in relation to the circumstances that an appeal would have created—something, incidentally, that I was not in a position to understand fully until I heard the evidence last week. Given the direction of travel of Aberdeenshire Council—which we know, because of the results of the special meeting that it called on 12 December—if an appeal had been made, both the appellant and the planning authority would have been arguing in favour of the appeal. Consider the consequences of that for the Scottish planning system, including, perhaps, a substantial six-figure bill for the council tax payers in the Aberdeenshire Council area. I think that that was what was referred to when people spoke about the Scottish planning system being placed in some difficulty as a result of the circumstances.

Patrick Harvie: Rather than speculating about hypothetical appeals that it is already known were not being thought about by the developer, I have another question. Someone has mentioned the ministerial code just about every five minutes in this discussion. If a complaint were made under the ministerial code about your conduct, albeit that you might disagree with the basis of that complaint, it is clear that you would be the wrong person to determine the outcome of the complaint. Does not this whole affair underline the importance of independent scrutiny and independent application of the ministerial code by someone outside Government and, preferably, party politics?

The First Minister: There are two things to say. I am considering the ministerial code at the moment and nothing that I say to you, Patrick, should prejudice what I will recommend about it. It is true that I am the arbiter of ministers’ conduct. It is also true that the code that we have here is basically the ministerial code that we inherited—almost sentence for sentence—from Westminster. There have recently been changes to the Westminster ministerial code—I am looking at them to understand exactly what they mean—and there has been some controversy about whether the changes to that code actually reflect what people said.

If we look at that controversy—which is basically about how Peter Hain’s conduct is being examined—a confusion appears in people’s minds in terms of certain things that happen. For example, the committee has asked whether it was appropriate to be in a ministerial car for the meeting that was held at the Marcliffe hotel and whether it was appropriate to have a press conference at St Andrew’s house. We have

provision to judge such things at present. Questions about the use of facilities are judged by the permanent secretary. People might not like the permanent secretary's judgment, but the permanent secretary can judge whether things are appropriate, proportionate and so on. Incidentally, the permanent secretary did so in this case.

I turn now to the interpretation of the Scottish ministerial code and whether the conduct of ministers should be left to the First Minister to determine. The arguments for doing it that way are based on parliamentary accountability for the appointment of ministers and on ministerial accountability to Parliament. I am reflecting on that at present. As I said in response to one of Jackie Baillie's many questions, the review of the code

"is expected to conclude in the near future and a revised version of the Code will be published shortly by the First Minister."—[*Official Report, Written Answers*, 3 December 2007; S3W-6785.]

Robert Brown (Glasgow) (LD): Good morning, Mr Salmond. I return to what seems to be the central issue: the question whether you and your actions were clearly divorced from the ministerial decision-making process and whether or not you exercised appropriate or inappropriate influence, or exercised no influence at all. We know that you were publicly in favour of the application, because you said so at an election meeting. We know that you facilitated the meeting that the Trump people had with the chief planner, because you have said so this morning. We know that, within an hour of that meeting, the Cabinet Secretary for Finance and Sustainable Growth made the decision to call in the planning application.

I want to be clear about your justification for getting involved in the first place. Was it because you thought that you could legitimately seek to influence the outcome of the decision, if you went through the proper channels? I think that the ministerial code covers that. Is it your position that you have not been trying to influence the planning application, because that, in your view, is against the ministerial code? Is it a matter of influence, attempted influence or neither?

The First Minister: On your first point, let us be clear that the public statement in Inverurie was before the election and before the application of the ministerial code. If we applied a rule that people cannot make public statements if they think that they might become a minister at some point in the future, I suspect that none of you around the table would be making public statements on anything. At each stage in the process, I made it my business to find out what I was and was not entitled to do and what others were entitled to do. I sought advice at each stage.

I recently saw a letter in *The Herald* from Mr Brian Fitzpatrick, who used to be an MSP. One of

the complaints that he made against me was that I had not sought advice from officials—so he thought. In fact, he was entirely wrong about that. At each stage in the process, I sought advice from officials, first about what I could and could not do in my roles as constituency MSP and First Minister; secondly—

Robert Brown: My apologies, Mr Salmond, but you have told us all this before. I asked you a specific question.

The First Minister: I am coming to the other bit. Secondly, I sought advice on whether I could meet my constituency interest, which I was told I could, even under the circumstances of 29 November. Thirdly, I phoned Jim Mackinnon to find out whether he, as chief planner, was able to meet the Trump Organization to talk about processes and timescales, as he put it—but not about the merits of the case. In each case, the answer that I got was what I did. I did those things because I am a constituency MSP and I wanted to fulfil my duty to assist my constituents. I also assisted people who were objecting to the application. The matter of assisting people and doing one's job is not necessarily related to the matter of one's own opinions on the issue.

Robert Brown: I do not want to be difficult but, with respect, that did not answer the question. I asked what you were seeking to do when you had that contact with the chief planner. By facilitating the meeting, were you seeking to influence what then took place?

The First Minister: No.

Robert Brown: You were effectively saying, "I am Alex Salmond. Can I set up a meeting with you?" There would have been an implication that you wanted something to result from the meeting.

10:00

The First Minister: First, the meeting at the Marcliffe hotel was requested by the Trump Organization. My request to Jim Mackinnon and David Ferguson was whether, under the circumstances, I could go to that meeting.

The meeting with the planners was also requested by the Trump Organization—incidentally, it says that in its statement.

Robert Brown: I am sorry to interrupt, but you said to the committee earlier that, having set up the arrangements to start with, you handed the telephone to the Trump people. The meeting was legitimate.

The First Minister: Let me try again. I asked Jim Mackinnon whether it was possible, under the circumstances, for him or somebody from the planning directorate to meet the Trump

Organization. He said that it was. I then handed the telephone to George Sorial, who made arrangements for the meeting. The reason for the phone call was that the representatives from the Trump Organization said that they wished to meet the planners, just as they had wished to meet me.

If I may say so, this is not in dispute. The only people at the meeting in the Marcliffe hotel were the representatives from the Trump Organization, me and my constituency secretary. I, now, and they previously have said exactly what happened. That was confirmed by Mr Mackinnon when he gave evidence to the committee last week. The sequence is perfectly understood—there is no dispute about what anybody has said about the matter.

Robert Brown: I am clear about that, but equally I am clear that a major international corporation with a battery of lawyers and consultants is capable of setting up a meeting with the chief planner, whom they have met on many occasions. I suggest that the real story is that you are the First Minister of Scotland, you told the Trump people that you would sort out the unfortunate situation created by the Aberdeenshire difficulties and that, expressly or by implication, the telephone calls to the chief planner carried a clear message that Scotland's chief honcho—you—wanted action; action that an ordinary back bencher would not have the leverage to get. Is that not the real position?

The First Minister: No. It is not the real position, and no doubt Mrs Helen Eadie, in her meeting today with the chief planner about the Rosyth development, would not regard her actions as a constituency MSP as in any way difficult either. That is not the position. I was acting as a constituency MSP. I was acting in a way that confirmed that I was able to and could do what I would hope any MSP would do under the circumstances. Since Mr McLetchie rather expertly asked about it, let me reiterate that when we had the meeting in the Marcliffe hotel, I had no knowledge that call-in was an option. I was concentrating on what I thought were the processes that needed to be explained to my constituents, about the likelihood of Aberdeenshire Council being able to pursue a meeting of the council or indeed the appeal procedure.

Surprising as it may sound, although I am not an expert on planning appeals, it seemed to me that the Trump Organization was not entirely confident of what the planning appeal position was. We spent some time talking about it. The Trump representatives explained to me—which was useful—that they were concerned about damage to reputation, about being seen to appeal over the heads of local people and about going where they were not wanted. However, I thought that they

were uncertain about the process of appeals. At the time, I thought that the available options were either reconsideration by the full Aberdeenshire Council or an appeal. I am afraid that I was not aware that call-in was an option.

Robert Brown: I accept that. I think half of Scotland was not aware that call-in was an option. I want to be clear about something else. You previously made a great play of telling the committee that you could allegedly do a variety of things under the ministerial code, including making the electorate's views known, writing to the minister and leading deputations. Am I clear that you did not write to the minister or lead any deputations and that all that you did was to contact the chief planner? Is that the position?

The First Minister: It is true that the only contact that I had with the planning minister was, first, when he told me that he, and not Stewart Stevenson, was going to act as planning minister and secondly, when he told me that the application was being called in. I was trying to illustrate the range of things that are possible under the ministerial code in order to underline to the committee that there was a variety of things that I could have done—

Robert Brown: None of which you did.

The First Minister: Well, yes. The things that I could have done go far beyond the actions that I did take. I suppose that the answer to that is that I was pursuing my role in a very precautionary way.

Robert Brown: Paragraph 6.10 of the ministerial code states:

"Ministers can, in representing their electorate's views"

do various things. Where does the code say that you are entitled to contact the chief planner?

The First Minister: As the chief planner illustrated to the committee last week, a variety of MSPs contacted—

Robert Brown: But where does the code say that you can do that?

The First Minister: It is the right of any MSP to contact officials. What is in the code makes it clear—

Robert Brown: Forgive me, but where in the code?

The First Minister: Robert, the code does not specify that a minister can contact the chief planner because it is understood that it is the right of any MSP to do so. As we found out last week, many MSPs have done that. The code clarifies the fact that more public events are possible for a constituency MSP who is also a minister if they are excluded from the decision. That is the point.

The code specifies the range of freedoms that an MSP has.

I am surprised that you are pursuing this line of questioning. I seem to remember—you can correct me if I am wrong—that I set these matters out last week. I did so because I think that there is widespread misunderstanding about the position. I remember you nodding about this, Robert. The code is there to be helpful and explains that, as long as a minister does not make the decisions, they have the full ambit of what an MSP can and cannot do available to them. As we heard last week, one of the things that an MSP can do is contact the planning officials—of course they can.

Robert Brown: I have a final question. We also identified with you the fact that there is a distinct difference between making the electorate's views known and making the views of the Trump Organization known in this context. In retrospect, do you take the view that the whole series of events, seen together by an independent outside observer, could be said to have tainted the process and, therefore, imperilled the decision, preventing which problem is the central point of the ministerial code?

The First Minister: No, I do not. I take the view that, throughout the process, I have taken a precautionary approach. I have applied the ministerial code exactly and have interpreted it in a precautionary way. I have withheld from doing many things that the ministerial code says that I am entitled to do—a point that you helpfully made. I have not made public statements—apart from once. It would not have been difficult, given the electorate's views on the matter, to make a range of public statements under the terms of the ministerial code. I chose not to do that and I was advised not to do that because I am the First Minister and because I took a precautionary approach throughout.

You have had confirmation from a number of sources, including a public statement by the Trump Organization about the meeting at the Marliffe hotel and Alan Campbell's evidence last week when the committee rightly pursued him—I think that it was you, convener—about whether there was any misunderstanding of my roles as First Minister and as constituency MSP. In every letter and every response to every e-mail, the authorised response from a spokesperson on my behalf has made the distinction clear. I have done exactly the same thing. As I said at first, in every aspect of what I have done, at every meeting and in every phone call, I have made clear the distinction between my acting as a constituency MSP and my acting as First Minister.

If what I have done in this process—which I think has been to follow totally the ministerial code and to be totally precautionary—has not

conformed to the code in every degree, I am at a loss to understand how any minister at any point and on any subject could conform to the code. In each and every case, I have gone to the nth degree to ensure that there has been no misapprehension about my role as First Minister and my role as a constituency MSP. That has been validated in the evidence that you have received, and I can back it up with the documentary evidence of letters and e-mails. For anything else, you will just have to accept my assurance that that has been the pattern of my behaviour throughout the case.

Robert Brown: The trouble is that the Scottish Government's representatives denied the fact that the Trump Organization representatives were present at the meeting in the first place—that had to be dragged out of them. On reflection, does that not cause you some concern?

The First Minister: You pursued the matter last week with Mr Swinney, who explained well the circumstances of that misapprehension. You will see him again and can ask the question again.

Throughout this process, everybody has been as open and as consistent as possible; any mistakes were inadvertent and are explained by the circumstances at the time.

People have talked about perceptions and a lot has been made of the series of phone calls between Jim Mackinnon and Alan Campbell. Last week I heard the evidence from both sides about those phone calls. I had no knowledge of that when I was questioned in Parliament. How could I have had such knowledge then? However, the officials on both sides of those phone calls behaved perfectly properly. If we, as parliamentarians, lie about what people have said about things—perhaps some parliamentarians have been finding out about that over the past 24 hours—and if we say that it is a huge difficulty and somehow untoward if somebody expresses an opinion, we will lead Parliament and public life in Scotland into a position in which it is impossible for people to pursue their responsibilities.

I do hope that we do not get to that stage because if we did, we would lose something that is much wider and larger than the proceedings of any one committee on any one issue; we would be in a position in which people would be unable even to behave properly in public life for fear that someone somewhere might have the perception that something improper might have happened and might suggest that it had, even when it was explained that there was no evidence to substantiate that position. I hope that, when people consider the matter—notwithstanding this committee's consideration, which is not the least of it—they will understand that there is a wider issue here about our ability to act in public life.

Lastly, in everything that I have done on this issue, I have followed the ministerial code and taken the precautionary approach—to the n^{th} degree. I hope that Robert Brown will be able to accept that from what I can prove to him with the documentary evidence.

The Convener: Perception is all, they say. There has been concern about remarks in the press last week that were attributed to you, First Minister. I note for the record that this committee has not considered the evidence or a report and that that is the committee's job and not the job of the First Minister or his press officers.

The First Minister: What are you talking about?

The Convener: You cannot presume to know our view of the evidence that has been given to us. We have not had a chance to examine it, or to produce a draft report. Committee members were concerned about press statements last week about what the committee's view would be. I put it on the record that we have not completed our job and that there may be further evidence to take. We will evaluate all the evidence before coming to the report, which will, at the end of the day, express the committee's view—not Duncan McNeil's or Alex Salmond's view.

Thank you for your attendance this morning. I suspend the meeting until the next witness is ready.

10:13

Meeting suspended.

10:17

On resuming—

The Convener: We resume agenda item 2. John Swinney, Cabinet Secretary for Finance and Sustainable Growth, is with us to continue with his evidence session.

Kenneth Gibson: Before we kick off, I must raise something. We have had chronic overruns last week and this week. I think that an appalling discourtesy has been shown to the people whom we have invited to give evidence, both today and last week. The cabinet secretary has been kept waiting more than 45 minutes, despite the fact that, as the First Minister made clear, he has an engagement in Ayrshire. The session overran by some 45 minutes.

There has to be a wee bit more control of the time in the committee. Some members have been asking question after question—and in an aggressive way. Obviously, you are the convener but, when I was in committees in the first session, it was traditional for each member to ask up to three questions and, if there was time available,

for subsequent questions to be allowed. To expect witnesses to come along and answer a battery of a dozen or more questions from one member, which might take up half the time allotted for the evidence session and which results in a chronic overrun, is frankly dreadful. It is an appalling discourtesy to the witnesses who have come before us.

The Convener: Do you have a question?

Kenneth Gibson: The question is, will we hold to the one hour that the cabinet secretary has been allotted? Apart from anything else, he has to lead on the budget debate this afternoon. To many of us, that is a lot more important and significant than the “How many angels can dance on the head of a pin?” stuff that we have heard this morning.

The Convener: You have expressed your view; you have used up even more of the cabinet secretary's time this morning. The cabinet secretary and the First Minister gave us notice that their time would be constrained. The First Minister indicated that last Thursday. We were told by the cabinet secretary's private office that he had no external commitments of which it was aware, although he had heavy parliamentary commitments. That was the case until Friday afternoon.

If we are allowed to proceed, we will get through this. If members do not ask other questions, we will get through it quicker. It is difficult for the convener of any committee to curtail questions. The last time that we had people here, some members were unable to ask questions. In both evidence-taking sessions, members were given a minute or three minutes, for example, in the whole time. It is difficult to allow members to carry out appropriate scrutiny of ministers and at the same time to proceed as planned.

Johann Lamont: I would like to make a small point.

The Convener: If you insist, but I do not intend—

Johann Lamont: The First Minister's time is clearly very constrained, and I presume that that is why he is still outside talking to the press rather than going to his very pressing engagement.

The Convener: I think that we should proceed.

Cabinet secretary, I am sorry that you had to listen to our housekeeping arrangements. We welcome you to the committee to continue giving evidence. We will proceed as efficiently as possible, but our efficiency will depend on the number of members who ask questions, on the questions they ask and, of course, on the length of your answers.

David McLetchie: Good morning, Mr Swinney. We heard last week from Mr Mackinnon—the point was alluded to earlier by the First Minister—that a concern over the way in which the planning application was dealt with was that, had there been an appeal by the Trump Organization, Aberdeenshire Council might have received a bill for what Mr Mackinnon described as

“hundreds of thousands of pounds arising from legal fees and planning consultants’ fees”.—[*Official Report, Local Government and Communities Committee*, 16 January 2008; c 453.]

Mr Ferguson might know whether such a thing has ever happened in the past.

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): If we are talking about costs being awarded against a local authority because of its stance in a planning inquiry, or because it had not been able to support its reasons for refusing an application in the way described in the circular on appeals expenses, I am pretty certain that such circumstances have arisen before. I recall one case, although it is not recent, in Perth and Kinross Council.

David Ferguson (Scottish Government Planning Directorate): Such things have happened in a number of cases, Mr McLetchie, but I will come back to you with a more specific and detailed reply if that would be helpful.

David McLetchie: Have people been billed hundreds of thousands of pounds?

John Swinney: We can give you that information. As we all know, planning inquiries can be pretty expensive affairs once the lawyers get started, Mr McLetchie.

David McLetchie: Indeed they are expensive.

Mr Swinney, was this matter reported to you by Mr Mackinnon in either of your five-minute conversations before you came to your decision? Or did you already know about it and therefore required no briefing?

John Swinney: Is the “matter” that you are asking about the possibility of liability falling on Aberdeenshire council tax payers?

David McLetchie: From expenses.

John Swinney: Mr Mackinnon told me that a sub-committee of Aberdeenshire Council had expressed one opinion, but that it was likely that the council in plenary would support the planning application. That likelihood was subsequently confirmed by the decisions of the council on 12 December. Mr Mackinnon explained that the council could be facing in two directions, which could raise real issues about the integrity of the planning system. It was possible that, at an appeal hearing, the Trump Organization would turn up to

argue in favour of the application, and that Aberdeenshire Council would also turn up to argue in favour of the application.

In the circular of 22 March 1990—on the award of expenses in appeals and other planning proceedings—a requirement is placed on the planning authority to be able to

“support its reasons for refusal”.

I think that we can all see that that would have been rather difficult for Aberdeenshire Council to do if it had then decided to take the stance that it subsequently took. As I said last week, the planning system would have been brought into disrepute.

David McLetchie: I do not quite understand this. We have heard how the pen was poised over the decision letter and how that was one of the reasons for the great rushed decision. My understanding is that, with any decision letter on a planning application, the applicant is entitled to be informed of the decision and the reasons for refusal. Clearly, the officials at Aberdeenshire Council would have been perfectly capable of constructing a decision letter that notified the Trump Organization of the decision and the reasons for refusal. Had the Trump Organization appealed against the decision, the reasons for refusal would have already been set out on the record. What is the problem here?

John Swinney: That is all absolutely correct, Mr McLetchie.

David McLetchie: Indeed it is.

John Swinney: But if the Trump Organization had appealed, the consideration of that appeal might have meant a public local inquiry involving—as everyone who is sufficiently well versed in this case will know—a multiplicity of parties and players. What would Aberdeenshire Council have said at that inquiry?

David McLetchie: We will come to that.

John Swinney: Under the terms of the circular, the council has to be able to

“support its reasons for refusal”.

However, it was becoming clear—and has now been made absolutely crystal clear—that a body of opinion in the council fundamentally disagreed with the decision of the sub-committee. Indeed, Aberdeenshire Council members have now given the application an overwhelming if not unanimous endorsement. I can see that you are developing a line of questioning, Mr McLetchie, but I cannot understand how you can say with certainty that we could have avoided the situation that I was considering.

David McLetchie: I will tell you how. First, the council had articulated its reason for refusal, which instead of being advocated enthusiastically could have simply been tabled at an inquiry. Because the Trump application was in conflict not only with the structure plan but with many other plans, there was ample reason to refuse it. Indeed, on the face of it, there would have been no difficulty in formally justifying such a move.

Secondly, the council got itself into its difficult position only because the second meeting of the full council went ahead. From the evidence that we received last week from the very careful Mr Campbell—who, in seeking not only legal advice from solicitors acting for the council but the opinion of senior counsel, struck me as an excellent public servant—I am pretty certain that, instead of the Government calling in the application, had Mr Trump appealed the decision Mr Campbell would not have allowed his authority to get itself into a position in which it faced two different directions at the same time. Indeed, it would have said that now that Mr Trump had appealed the decision it would not have been appropriate for the authority to take a contradictory view. There would have been no question of the Aberdeenshire taxpayer losing hundreds of thousands of pounds. Did neither you nor Mr Mackinnon have any confidence in Mr Campbell's ability to handle the matter in the best interests of the taxpayers in Aberdeenshire?

John Swinney: Your question is predicated on the assumption that immediately after Aberdeenshire Council had issued the decision notice the Trump Organization would have decided to appeal before the supplementary meeting was scheduled to take place. I cannot quite recall, but I am pretty sure that the special meeting of the council had been requisitioned on Monday 3 December. Indeed, I have in my folder a statement from the leader of Aberdeenshire Council—to which I believe the First Minister has also referred—making it expressly clear that she would do everything in her power to keep the application alive.

The balance of probability in the debate about where events were going lies with my view of the world. It was likely that the council was going to take a stance that contradicted that of the infrastructure services committee.

10:30

David McLetchie: That could not have happened. Had the decision letter been signed—we are told that the pen was poised and ready to sign it—call-in would not have been a legal option. Mr Trump could then only have appealed. Had that happened—

John Swinney: We went round these houses last week.

David McLetchie: Yes, and it is true.

John Swinney: I do not dispute the point that, once the decision letter is issued, that is it—call-in is not an option. I have absolutely no issue with that. My point is that, once the decision letter was issued, Aberdeenshire Council would still have been perfectly able to take the stance at its requisitioned meeting on 12 December that it supported the application. That would have created a scenario in which Aberdeenshire Council would have been pointing in two directions.

David McLetchie: You say that. But I say to you—

John Swinney: Please, convener. I want to—

The Convener: David McLetchie can come back in after John Swinney has finished.

John Swinney: Thank you, convener.

My view of the events that were coming to a head at that stage was that it was likely that Aberdeenshire Council would be pointing in two directions and that the planning system would be perceived in a very poor light as a consequence. The option that was available to me—properly legally founded—was to call in the application before the decision letter was issued, and that is exactly what I did.

David McLetchie: We have heard that Aberdeenshire Council got its legal opinion from senior counsel on 5 December that the decision of the infrastructure services committee was final. Prior notice of that was communicated to Mr Mackinnon, the chief planner, on 4 December. Had the decision letter been signed and sent off on 4 or 5 December, Mr Trump would only have been able to appeal, and that would have been against a backcloth of the chief executive of Aberdeenshire Council having in his hand a written opinion stating that the decision of the infrastructure services committee was, in effect, the final decision that could be taken and that, as a planning authority, Aberdeenshire Council had no further decision-making interest in the matter. That was a perfectly possible scenario.

I put it to you that if, instead of making your decision on the basis of two five-minute phone calls, you had taken time to reflect over the 24 hours at least that Mr Mackinnon said last week, in evidence, was available, the matter might have been fully considered and the council facing in two ways at the same time would never have happened. The careful Mr Campbell would have ensured that the council did not put itself in that position with hundreds of thousands of pounds at stake.

John Swinney: That is an opinion; it is not a proven fact. Clearly, you can substantiate that opinion; however, I have a completely different opinion.

David McLetchie: The difference is that my opinion was not formed by two five-minute telephone conversations on a major planning application, whereas your decision was made after two five-minute telephone conversations and before all the matters that I have just outlined were properly considered by you.

John Swinney: My decision was made on the basis that unless I made that decision, there was a serious risk that further damage would be done to the integrity of the planning system because of the way in which the application was then likely to proceed.

Furthermore, none of the scenario that you have painted rules out the possibility that, once the decision letter had been issued, at any stage—absolutely any stage—at a meeting of the full council, Aberdeenshire Council could have taken the view that it was supportive of the Trump application and could have dispatched its officials to the planning inquiry to support the planning application. That is totally possible; it is utterly permissible; and it is the likely scenario based on what the Government understood that members of the council were saying and what they wanted to do.

The Convener: There is certainly a divergence of views on that issue.

Jim Tolson: Good morning, Mr Swinney. You will be glad to know that we will not ask you too many questions today because we got part way through our questions in the evidence-taking session last week. Thank you for coming back this week to complete your evidence.

Last week, I asked you about the decision-making process. I have a couple of further questions about it. Do you find it at all worrying that you did not receive any written advice about the options or any notification that the developers had so recently been in discussions with your chief planner?

John Swinney: It is perfectly possible for ministers to consider issues without seeing everything on paper. I say with the greatest of understatement that I could do with seeing a little less paper than I currently see every day. Much more could be done without putting everything to paper, not least to lessen the environmental impact. It was not particularly unusual that I did not have a piece of paper in front of me on which to base my judgment. I was perfectly able to have discussions with the chief planner, understand the issues that he set out to me and the points that

were being considered. It was not particularly exceptional.

Jim Tolson: Do you not think that the extensive meddling of the First Minister and the Trump officials with the planning officials made it all the more likely that an application might fall victim to judicial review?

John Swinney: There are two points to make on that, Mr Tolson. The first is that no such practices as you describe were involved. Secondly, it is clear that there is an absolutely secure legal basis for the decision that I arrived at on 4 December. I am enormously confident in the decision that I took.

Jim Tolson: The decision that you took was on the matter itself. What might be under question, however, is the propriety of how the whole matter was handled. How come, for example, the answer given to parliamentary question S3W-7699 stated that there had been two phone calls when in fact there had been three? There have been several inconsistencies—even abrasiveness—now that the truth is known about the calls made between Alan Campbell and Jim Mackinnon on 4 December.

At first in your evidence, you said that there had been one phone call, then you said that there had been two and then you said that there had been three. That was all within the space of one hour. Just how many times do you have to be asked before the truth comes out?

John Swinney: I apologise, convener, that this will be a long answer. Let us go through the sequence of events. On 13 December, the First Minister was asked by Mr Nicol Stephen at First Minister's questions about two phone calls between the chief planner and the chief executive of Aberdeenshire Council. So there we have Mr Nicol Stephen alleging that there had been two phone calls and not the three that we now know was the case. Mr Stephen's informants cannot have been terribly accurate about the information that they gave him.

Jim Tolson: But that information had to be dragged out by this committee.

John Swinney: I will answer your question fully, Mr Tolson, if you will pay me the courtesy of not interrupting me as I go through the sequence of events. On the occasion when the First Minister was asked about the telephone calls, he had no knowledge of the issues because in that particular situation he was the MSP for Gordon and had no right to know of the content of those answers. It was one of those scenarios that I used to pull all the time at First Minister's questions—you pull out of the hat an issue about which the First Minister is unlikely to know the details and then you crow about the fact that the First Minister does not know

the details. It is an old trick that can be well deployed—although not particularly well these days. So, if I get my dates right, it was on 13 December that the phone calls first came to light.

We gave clarification to the news media on the basis of the two telephone calls and we gave it very quickly. I remind you that after the exchange at First Minister's questions, the chief executive of Aberdeenshire Council had to issue a corrected statement, which he explained to the committee, because Aberdeenshire Council got the details wrong in explaining what had happened.

I presume that the information on which Mr Stephen based his questions had, in some way, come through Aberdeenshire Council or some source associated with Aberdeenshire Council. That was clarified on 13 December; however, Mr Salmond could not possibly have been expected to know those details, as he was out of the process because he is the MSP for Gordon.

I gave a written answer to a parliamentary question from Mike Rumbles—S3W-7699—on 20 December, in which I referred to telephone calls because, at that stage, that was my understanding of what the position had been. When I read the evidence that was given to the committee by Alan Campbell in writing, I realised that there was an inconsistency and made further inquiries, and on 15 January I corrected the answer that I had given.

All of what I have said to you I put on record—at column 502 of the *Official Report*—in answer to Mr Brown at the committee meeting on 16 January. I am not sure what new ground we have covered since that exchange, bearing in mind the fact that the correction of that parliamentary question was not only covered in a letter that I sent to Mike Rumbles on 15 January, but was also set down in the *Official Report*, at columns 502 and 503, on 16 January.

Johann Lamont: We appreciate your coming back to the committee today.

I will ask, first, about the decision to call in the application on the basis of the need to preserve the integrity of the planning system. You said last week that you did not need to make an opening statement to us because you had provided "extensive material" in your statement of 20 December. Why did that material contain no clarification of the fact that the application was called in to preserve the integrity of the planning system? There was no mention of Aberdeenshire taxpayers or the kind of argument that we have had over the past two weeks.

John Swinney: The planning application was called in for the reason that was stated in the call-in letter that Mr Ferguson issued on my behalf. As

I stated last week, the call-in letter said that the Scottish ministers gave the direction in view of

"the proposal raising issues of importance requiring scrutiny at a national level."

Johann Lamont: So it was because the planning system was in meltdown and its integrity stood to be damaged, but at no stage in your explanation of 20 December was that argument deployed.

John Swinney: What was deployed on 20 December was not an argument; it was a statement of facts. In my statement of facts on 20 December, I made it clear that the application had been called in because it raised issues of national significance. That is the call-in direction that Mr Ferguson issued on my behalf. What I said at last week's committee meeting was intended to give the context of the thinking behind the decision to call in the application and the reasons for the timing of it.

Johann Lamont: If the integrity of the planning system was going to be called into question by the process that Aberdeenshire Council initiated, that would have been known to you, as somebody who understands the planning system. You would also have known that you could have called in the application before a decision was made. Given that the planning system was going to be used, why was the call-in not made before the decision was made by the council?

John Swinney: Yes, I follow what you are saying.

Johann Lamont: If there was a ramshackle system in Aberdeenshire Council that was going to lead to a difficulty—to challenges from taxpayers—why was the application not called in at an earlier stage?

John Swinney: The problem was that we ended up in a situation in which one sub-committee of Aberdeenshire Council said yes, another sub-committee said no, and the overwhelming majority of councillors on Aberdeenshire Council requisitioned a special meeting to take a decision—which they have, subsequently, taken—to endorse the planning application in principle. That is not a scenario that we expected.

You would expect the planning process to proceed in an orderly manner and to come to a conclusion, and for members of the council to be content with the process that had been deployed. That was clearly not the scenario that we faced on 3 and 4 December. That is where the danger to the integrity of the planning system came in—and the subsequent dangers that would have arisen if the council had sustained the view that it took on 12 December that it wanted to support the development.

10:45

Johann Lamont: Everybody accepts that the decision was virtually unique. I am not saying that it was not legal. In those circumstances, it is remarkable that the arguments that you now deploy were not deployed on 20 December. It is understandable therefore that people perhaps thought that what was in question was not the process that was used but the decision that was reached.

John Swinney: Obviously, that point of view could be advanced if individuals wanted to advance it. In my view, I was acting to exercise my powers, as the planning minister in this case, to call in an application when I had the legal right to do so. I did so on the basis that the call-in was because the application raised issues of national significance. I was mindful of a context and driven by a timing factor. I thought that the planning system was in danger of falling into disrepute because of the contradictory positions being adopted within Aberdeenshire Council.

Johann Lamont: You called in the application on the basis that the integrity of the planning system was under threat, but that was not deployed as an argument on 20 December—so people's perception was that the council must have come to the wrong decision. Were you given advice on whether such a decision would have an implication for other applications that had been decided by Aberdeenshire Council? There may have been consequences, for example that those other applications that had been determined under the same planning process by the council—which has now been characterised as having damaged the integrity of the planning system as a whole—might have made the council liable to judicial review.

John Swinney: I am not familiar with all cases determined by Aberdeenshire Council, but it is unlikely that a motion would be passed at the full council to say that the council should support an application that a sub-committee—for example the infrastructure services committee—had turned down. That is the crucial point that I am trying to get across.

Johann Lamont: As the planning minister, you will know that planning authorities make decisions on planning issues and do not simply express an opinion. There is a very different test to be applied to councils on that basis. You cannot presume that a planning authority will take any particular view. As you will know from the recent planning legislation, we were clear that local authorities ought not to take a corporate view on planning issues.

John Swinney: I do not see how a local authority could fail to take a corporate view on a

planning application. It must, because it has to determine that planning application.

Johann Lamont: No, it has to make its decision on the basis of planning merit. It cannot say, "We would quite like that to happen," and then vote for it to happen if it is contrary to all planning legislation.

John Swinney: Okay. I misunderstood your use of the word corporate.

Johann Lamont: You did not receive advice to suggest that the process that was used for the application—call-in—might have implications for other applications that were determined under the system and might subject the local authority to judicial review on those applications?

John Swinney: The crucial point that that analysis ignores is the fact that in no other scenario has Aberdeenshire Council come to a view that it should support an application when that view is contrary to that of a sub-committee.

Johann Lamont: That is entirely speculative.

John Swinney: Johann Lamont infers that the council is not allowed to do that. The council decided at its meeting on 12 December to support the application. We are in exactly the scenario that I suspected we would end up being in.

Johann Lamont: But that was as a consultee—

The Convener: I am sorry, but we have to move on.

A couple of genuine questions have arisen from the evidence we heard from Mr Campbell and others. We have been able to infer that what happened was a mess, but we have heard that Aberdeenshire Council's procedures were correct and legal in every sense. In principle, what is the relevance to planning law of the council's decision? I am thinking beyond the relevance to the council's structures and procedures, and wondering about the standing of the decision in general. What is the standing of the meeting that was held in reaction to the news that the application had been turned down?

My second question relates to the call-in. How often have you been involved in the call-in process?

John Swinney: In answer to your first question, the decision of 12 December has status only in so far as Aberdeenshire is a consultee in the determination of the planning application. However, I go back to my exchange with Mr McLetchie a few moments ago. I was concerned about the council taking a different view and facing in two directions during any form of inquiry or process in relation to the determination of the application.

The Convener: The council decision gave a strong signal to the developer, as did the actions of the Scottish Government, to prevent the developer from walking away. I understand that. Some clarity was required about the decision.

John Swinney: Your second question was about the call-in. The committee will know that Stewart Stevenson is the minister responsible for planning, but I decided to take the responsibilities in this case. I did that because Stewart Stevenson's constituency is close to the Menie estate. I felt that my decision was the right way of ensuring an appropriate distance in the consideration of the application.

I have checked my records in response to a question that Patricia Ferguson asked me last time I was here. I decided to exercise the planning responsibilities on 25 October, and I communicated that decision to the chief planner at that time. Last week, I told the committee that I thought that I had made the decision round about early November. I made it on 25 October.

The Convener: So, you were the planning minister from 25 October?

John Swinney: Yes.

The Convener: And you had never previously handled a call-in. This was the first.

John Swinney: Yes, but—

The Convener: That is fine.

John Swinney: But I want to give you some further information. As part of my responsibilities as Cabinet Secretary for Finance and Sustainable Growth, I have two particular areas of interest in planning activity. First, obviously, I carry Cabinet responsibility for the planning portfolio, which means that I have to be well versed in the contents of the planning portfolio. Secondly, it was envisaged that there would be circumstances in which I would act as the planning minister. During the process of becoming familiar with all areas and aspects of my powers and responsibilities, I have become aware of the powers and the duties that are involved with my potential role as the planning minister.

The Convener: Just to recap, you took over direct responsibility on 25 October—

John Swinney: For this case.

The Convener: Yes. It was your first call-in. You came to your decision based on two five-minute telephone calls, without a paper trail. To take the point that Mr McLetchie made, would it not have been wise, given that you had some time in hand and were relatively inexperienced in this area, to reflect over that 24-hour period before you made a decision that was unprecedented, in planning terms, in Scotland?

John Swinney: We can all lay heavy emphasis on words such as “unprecedented”. Things must happen to create precedent; events take their course and precedent is created—that is where precedent comes from. I do not take your view, convener. I think that it is important that ministers exercise their responsibilities wisely and after due consideration. I had ample opportunity to think about the issues involved in the planning application and to discuss them with the chief planner. I came to my decision in that context.

Alasdair Allan: Much has been made of how many phone calls you had or what lay behind the decision to call in. Can you comment on the extent of the official advice that you got, particularly in light of evidence from the chief planner in which he indicated that the decision was at least partly driven by his concern to protect the planning process? He also mentioned some of his experience of planning law in the area, with the example of, I think, Ikea in Midlothian. To what extent did you have confidence in the advice that came as part of the call-in process?

John Swinney: I am confident in the advice that I get from the chief planner, as I am with the advice that I get on a variety of questions. The chief planner marshalled an explanation last week, in front of the committee, of his experience of dealing with planning applications and issues over a career stretching across, I think, 33 years in public service, with a number of years as chief planner. I know from members who were ministers in previous Administrations the degree to which they valued, as I value, the quality and integrity of the chief planner's advice. That was obviously a factor in my mind when I considered the advice that I received from the chief planner, so I had enormous confidence in the quality of that advice. That does not mean to say that I agree with him all the time.

Alasdair Allan: Do you feel that he was under pressure to provide the advice that you wanted to hear?

John Swinney: Well, I did not tell him what I wanted to hear. I wanted the chief planner to explain to me what the situation was and what options were available to us in the context of the concern, as I expressed to the committee last week, that there was considerable danger of the planning system being brought into disrepute.

Patricia Ferguson: Hello again, Mr Swinney. Last week, Mr Campbell from Aberdeenshire Council took us through the entire process as it occurred, as far as he was concerned as the chief executive of Aberdeenshire Council. His explanation of the situation was that the infrastructure services committee's decision was effectively, as things stood, the final decision that Aberdeenshire Council could take on the planning

application, but a number of councillors and others made representations to say that they were unhappy or uncomfortable with that decision. As a result, he sought legal advice as to the way forward and what other remedies were open to Aberdeenshire Council. He indicated to Mr Mackinnon on 3 and 4 December that the advice that would be presented to him on 5 December would be that there was nothing further that Aberdeenshire Council could do, but the call-in by the Scottish ministers meant that, at the meeting on 12 December, the council could, as a consultee, indicate that it was in favour of the planning application. Is that your understanding of the events?

John Swinney: I have no reason to dispute Alan Campbell's account of the sequence of events in relation to Aberdeenshire Council. Obviously, I am not a member of the council and I have no particular locus in what it was going through at that time. I am absolutely confident that there was nothing to stop Aberdeenshire Council resolving that it supported the Trump application, even once the infrastructure services committee had made its decision and once the decision notice had been issued—leading to the situation of the council facing in both directions at an appeal.

11:00

Patricia Ferguson: Mr Campbell was at pains to make clear to us that that was not possible.

John Swinney: Not possible? It is completely possible. Even if the Aberdeenshire Council infrastructure services committee takes a decision to refuse the application and issues a decision notice, nothing stops the council passing a motion in support of the Trump application.

Patricia Ferguson: But not as a planning authority.

John Swinney: No, not as a planning authority; rather, as a consultee—but not just as a consultee. As a self-governing independent entity, Aberdeenshire Council can say that it supports the Trump application for the Menie estate.

Patricia Ferguson: But it would be as a planning authority that the council would make its representations, were the Trump Organization to appeal the decision.

John Swinney: There is nothing to stop Aberdeenshire Council making a representation. Imagine that, in the course of a debate for costs at a planning inquiry, the advocate for the Trump group is able to say that it is entitled to get expenses because Aberdeenshire Council said that it supported the application. That is the real situation that Mr Mackinnon was painting last week.

Patricia Ferguson: The point is that the council was not the planning authority. Anything it said would, in a sense, be just the comment of a body of people who happened to have a particular role. That is the germane point.

John Swinney: You suggest that the council's comments were just the opinion of a group of people. It is not a village hall committee; it is Aberdeenshire Council. If it passed a resolution saying that it supported the Trump application at the Menie estate, that would have material influence on the debate about the awarding of expenses and costs in a planning inquiry. I cannot see how it would be otherwise.

Patricia Ferguson: As Mr McLetchie indicated, the advice that the council got from its efficient and effective chief executive might have given it cause to consider whether that would have been appropriate. I think it unlikely that, sitting as a committee, it would have gone against that advice. However, I am speculating—perhaps in the way that you have speculated about what the outcome might be.

Have any other planning applications come before the Scottish ministers on which you have decided to take responsibility rather than Mr Stevenson?

John Swinney: No.

Patricia Ferguson: No more so far?

John Swinney: No more so far—but I cannot rule it out.

Patricia Ferguson: Indeed. Did you personally advise Mr Stevenson that you were taking that course of action?

John Swinney: I did.

Patricia Ferguson: Did you advise him that you had taken the decision to call in the application?

John Swinney: I did.

Patricia Ferguson: When did you do that?

John Swinney: I cannot recall exactly, but it would have been on 4 December, I would think.

Patricia Ferguson: Would you have done that by way of a minute, or by a telephone conversation?

John Swinney: I would have done it personally or by telephone. I would certainly have done it orally.

Patricia Ferguson: Presumably after Cabinet.

John Swinney: I would imagine so, yes.

Patricia Ferguson: Indeed.

Johann Lamont: There is a perception and there is a problem for you as the cabinet secretary

in relation to planning, Mr Swinney. It seems only fair that I put that to you and ask you to respond. The Trump Organization has said today that it knows that the First Minister was in favour of the application. The First Minister says that he made an announcement, or answered a question, in Inverurie. Is it your position that you did not know what the First Minister's view on the application was? Does that not test our credulity, given that you are clearly a confidant of the First Minister? Indeed, I understand that the First Minister regards you as his favourite minister.

John Swinney: I assure you that it does not feel like that sometimes.

Johann Lamont: Absolutely. I am genuinely not making a facetious point; I am talking about perception and imperilling the decision. Given the situation, it would be reasonable for somebody from outside to say that as Alex Salmond has publicly commented on the subject and his very good colleague, who said when he called in the application that it was because it was a national development, now says that it was to ensure the planning system's integrity, which sounds like post hoc rationalisation, the challenge that you faced was that the First Minister wanted the proposal but the local authority had refused it and the Trump people had said, "We will not appeal."

None of those developments could have been predicted when you—and, indeed, the local authority's chief executive—said confidently that everybody knew that the proposal would come to your desk. Nobody predicted that the system's integrity would be flawed—otherwise, the application would have been called in earlier. Do you accept that the perception that you knew what the First Minister wanted, that you are in your position because of the First Minister and that you took a decision that you have now explained in different terms from those that you used on 20 December could allow for a challenge under judicial review?

John Swinney: There is a lot in there. First, it was news to me that the First Minister had ever commented on the issue. The Inverurie public meeting—

Johann Lamont: You did not know about that?

John Swinney: I say honestly that I did not know about the Inverurie public meeting—I had absolutely no idea about it. When I heard the First Minister refer to it last week, that was news to me, as I assumed that he had never said anything about the matter, because I had never heard him say anything about it, because of all that he had asserted after the election and because I knew with certainty that he had never said anything as the First Minister, as he could not say anything in

that role. The Inverurie thing was complete news to me.

I have never had a conversation about the subject with the First Minister other than the two conversations that I have described, in which I told him that I would act as the responsible minister and that the application would be called in. That was it.

As for the remaining comments about the proximity between the First Minister and me, I am of course a close colleague of his. The point was made that I am in my position because of the First Minister. Technically, that is untrue—thankfully, the Queen rather than the First Minister approves my appointment. However, I would like to think that I am in my position because I have something to contribute to the governance of Scotland rather than because I am a mate of the First Minister. As I say, the First Minister discusses issues vigorously. We are all involved in that, so sometimes we do not feel as if we are close mates.

All I can say is that I have gone through my political life deploying the characteristics and values that are part of me, of which integrity is at the core. I do not say that to be sanctimonious; that is simply how I go about my business. That is how I have gone about my business throughout my political life—in opposition and in government—and I can say only that. I leave it to committee members—

Johann Lamont: The issue concerns perception. I am talking about making your decision open to judicial review. I will put it another way. Do you think that Alex Salmond's meeting the Trump people in Aberdeenshire, phoning the chief planner while they were there and handing the phone to them helped or hindered the public perception that the decision is entirely separate from him and that you will be under no pressure?

John Swinney: I have been absolutely clear throughout that a person is one thing or the other—they are either the MSP for Gordon or the First Minister, but they are not both. That distinction is at the heart of the point. If the argument is advanced that when someone becomes the First Minister they cannot articulate a constituency interest, nothing stops the First Minister being involved in the decision-making process, but he is out of the decision-making process because he is the MSP for Gordon. To me, that is the choice. People must consider whether the system works on that basis. I have never felt any doubt that, when it comes to the issue that we are considering, Alex Salmond is the MSP for Gordon, not the First Minister of Scotland.

Johann Lamont: But both of you were ministers for Scotland when Trump said that Scotland was

not open for business, and you had to react to that.

John Swinney: People must accept that, in ministerial activity, it is possible to set boundaries and to think, “I am exercising certain functions in a particular fashion that is expressed clearly in the ministerial code, which distinguishes between an individual’s role as an MSP representing a constituency and their role as a minister exercising ministerial responsibility.” I am clear that in such scenarios you cannot be both, whether you are Alex Salmond, John Swinney or Stewart Stevenson.

The Convener: I do not know as much as some people do about the planning process but, ultimately, if judicial review came about, would not its role, or one of its roles, be to examine the integrity of the process?

John Swinney: The judicial review process in our legal system entitles individuals to test the appropriateness of decisions.

The Convener: Have you received any advice from your department about the circumstances in which a judicial review to examine the decisions might come about?

John Swinney: I do not make this point to be in any way difficult or evasive but, in answer to a parliamentary question, I have made it clear that the Government does not disclose whether it has or has not received legal advice. That is not a new position of the Administration—it has been the position of all Administrations. I cannot give you the reference, but that point is in an answer to a parliamentary question.

The Convener: I have seen that answer, but there was a slight difference—I do not know whether it set a precedent—when the First Minister sought legal advice over a treaty with Libya and asked the Parliament whether he could make a statement on it. That action seems to have changed the prevailing situation.

John Swinney: I can simply say what is in my response to S3W-7679 from Jackie Baillie. My answer states:

“It is Scottish Government practice neither to confirm or deny whether legal advice has been received.”—[*Official Report, Written Answers*, 20 December 2007; S3W-7679.]

That is the position—

The Convener: You made the point about the long-standing precedent that we do not discuss legal advice. I am asking you to accept that the situation changed when the First Minister sought legal advice on the treaty with Libya and asked to make a statement in Parliament about it.

John Swinney: I am not familiar with the details of the legal advice in relation to the Libyan question.

The Convener: I think that you were sitting beside the First Minister when he made his statement.

John Swinney: I say, respectfully, that that is an issue for the First Minister, not for me.

Robert Brown: I accept that difficult and complex decisions had to be made on some aspects of the planning application. There should have been two considerations for you: whether to use the call-in process, which was unprecedented but which some people knew about, including you, you say, despite your relatively limited tenure in office; and whether the decision-making process might be challengeable. You must be careful not to subject your ministerial actions to unnecessary challenge. Do you accept that, at the point of decision on 4 December, those were the two considerations to which you had to have regard?

11:15

John Swinney: I would characterise my considerations on 4 December as being about whether I had the power to act in that situation and, if I had that power, whether it was appropriate for me to exercise it.

Robert Brown: Did you exercise it reasonably, in a way that would not be subject to challenge?

John Swinney: That was my second consideration.

Robert Brown: The matter is part planning issue—the issue of the call-in, which might have legal overtones—and part judicial review, which also has legal overtones. You said that you do not comment on whether you receive legal advice. My recollection is that the Scottish Government would not usually reveal what the legal advice was, but it was not quite so coy about whether it had taken legal advice. I am subject to correction on that, of course. Before you made your decision on 4 December, after the two five-minute conversations, was any advice given to you or—to your knowledge—to the planners other than that from Mr Mackinnon?

John Swinney: The only advice that I got on the matter was from Mr Mackinnon. That is all that I can say in answer to your question.

Robert Brown: I have a question about the ministerial code. So far, the emphasis has been on Mr Salmond’s actions, but there is a section in the code on the planning minister’s duties. We have agreed that you were the planning minister at the relevant time. Paragraph 6.1 refers to “Action”—action by the planning minister—

“that might be viewed as being prejudicial”,

which includes the business of ministerial constituencies, although that does not apply to you. In addition to that—

John Swinney: Are you referring to paragraph 6.11?

Robert Brown: Yes. It also mentions the action of

“meeting the developer or objectors to discuss the proposal, but not meeting all parties with an interest in the decision”.

I accept what you said—that you did not meet the developers—but your chief planner did meet them. Have you any observations on whether there is a difference between the ways in which your chief planner and the planning minister—who takes advice from the chief planner—should approach such a matter?

John Swinney: The chief planner must be in a position to advise ministers on a range of questions. He made it clear in his evidence that he was in touch with Aberdeenshire Council. I recall pretty firmly that Aberdeenshire Council sent him a copy of the papers about the application that were going to the relevant committees. Those papers capture the arguments for and against the development and all the relevant considerations. The chief planner would have been in receipt of those papers so he was in a position to be well acquainted with the issues involved.

The ministerial code is the ministerial code. Sir John Elvidge has communicated with me about the conduct and actions of the chief planner. He said:

“I have felt it necessary to consider the way in which this case has been handled, to enable me to have confidence that there has been no impropriety. I have considered the behaviour of the civil servants involved and am satisfied that they have fully met the standards of propriety expected of them.”

That puts into question—

Robert Brown: Do you know what inquiries Sir John Elvidge made before he arrived at that conclusion?

John Swinney: If I know Sir John, he will have undertaken vigorous inquiries before putting pen to paper and writing such a letter to me.

Robert Brown: I return to the balance of decision. I might have put this question to you last time. If the planning minister receives papers from a council relating to an appeal, or indeed to a call-in before a decision is made by the council, it would be even-handed—there would be no perception that the minister had a view one way or the other about the matter. That is not quite the case once the council has made a decision,

because there is then an impression, at least at first glance, that ministers are unhappy with the decision and that there is an element of bias in their movements.

Do you accept that there is slightly more difficulty in doing a call-in once a decision has been made, against the background of the necessity that ministers remain neutral?

John Swinney: No, because if you follow the logic of what I have said and what has happened, Aberdeenshire Council has now endorsed the Trump application and thinks that it should go ahead. That is its stated opinion on the issue.

I was at pains to stress to the committee last week that the consequence of my actions was to ensure that there would be further consideration of the application—nothing more, nothing less. That is the point that we have reached.

Robert Brown: Perception is all, as a number of people have said during this inquiry. I have made the point about the call-in and the decision.

You now know—although you say that you did not know at the time—that Mr Salmond had expressed a public view in favour of the proposal at an election meeting. Mr Salmond was instrumental in facilitating and setting up the meeting that the Trump people had, within an hour of the decision, with the planning official. Those seem to me, if I may say so, to be factors that bring Mr Salmond, with an express view on the matter, very close to the decision-making process, both in time and in relation to the sequence of events. Do you accept or dispute the suggestion that, to the outside observer, it does not look as though the Scottish ministers have proceeded in a neutral way in the lead-up to your decision?

John Swinney: I would dispute it because, as I said in my response to Johann Lamont, I had no knowledge of the Inverurie declaration—if I can give it such significance in history. We all use such terminology.

Robert Brown: You know about it now.

John Swinney: Please let me finish.

What is known beyond dispute is that I took the decision to call in the application. Mr Salmond has sat in front of the committee and has been at pains to say that he knew nothing about the decision—and neither did Mr Campbell, the chief executive of Aberdeenshire Council. Mr Mackinnon did not have a conversation with Mr Salmond about a call-in, because that would not have been appropriate. That was a conversation for Mr Mackinnon and me to have.

I can only ask members to take at face value the fact that, when I took the decision on 4 December, Mr Salmond was out of the process as a minister,

because he is the MSP for Gordon—I viewed him as I would view any other MSP in relation to this issue. I was aware that I had to take a decision about the application and would be held accountable for it—and into the bargain I had no idea that Mr Salmond had ever expressed an opinion on the subject. I can only say that honestly in front of a parliamentary committee.

Robert Brown: Can I ask one more question?

The Convener: It is your last one.

Robert Brown: I appreciate that I have taken up the committee's time.

An answer to a parliamentary question from Mike Rumbles, which you issued yesterday, revealed that the chief planner's meeting with the Trump Organization began at 2.20 pm on the crucial day of 4 December. We now know that the meeting with the Trump people lasted for about three quarters of an hour—we do not know exactly when they left. The answer refers to a minute of the meeting. We know from previous evidence that the minute did not refer to the telephone call to Aberdeenshire Council or to the telephone call to Ann Faulds.

Does it not seem odd that, to explain the Scottish planning system there should be a meeting of three quarters of an hour between the Trump people and the chief planner, and to make a decision on the complex issues involved, including the call-in, judicial review, the legality of your actions, the appropriateness of your actions and the reasonableness of your actions, you have two five-minute conversations? Does that not strike you as being a little bit like an Alka-Seltzer Government—the answer to all-known remedies within an hour. Is that a reasonable assumption to make?

John Swinney: I have listened to your questions with great interest, Mr Brown. It strikes me that a lot of thought over the past couple of days has gone into producing sound bites for the questions. Obviously, more than five minutes of thinking was involved.

Your question presupposes that the first time I ever had a conversation about anything to do with planning was in a five-minute conversation with Jim Mackinnon. As I told the committee last week, I take a keen interest in all aspects of my ministerial responsibilities. It is an enormous privilege for me to be a minister in this Government and I devote a massive amount of time to my ministerial duties, which I take very seriously. Over the summer, through the receipt of all sorts of advice, guidance and briefing notes—I suppose it could be dressed up in corporate world terms as my induction as a minister—I became familiar with decisions in relation to the planning process.

Some of the issues that may have been discussed regarding the procedural components of the meeting on 4 December between the chief planner and the Trump Organization would have been more than covered in the many conversations that I had with the chief planner and his officials over the summer to ensure that, when the moment came and I had to act as the planning minister, I did not have to be sent to a training course to work out how to do it.

Robert Brown: I thank Mr Swinney for the courtesy of his replies to me.

The Convener: You have described your enthusiasm for your job, cabinet secretary, and the great interest that you take in it. In your answer to parliamentary written question S3W-7671, on the live planning application for the Macdonald Aviemore Highland Resort, you admitted that the First Minister had taken an interest in that application and had spoken to the chief planner. Before you signed off that answer, did you discuss the conversation that the First Minister had with the chief planner? Did you speak to your Minister for Transport, Infrastructure and Climate Change, Stewart Stevenson, about his involvement in that before you signed off the answer? Did you have any discussions with those people about the First Minister's role and what discussions he had with your junior minister and the chief planner?

John Swinney: No, I did not. In gathering information for the answer, it would have been discussed between me and my officials, principally Mr Ferguson and a number of his colleagues. Obviously—

The Convener: You signed off that answer, which admitted that the First Minister had taken an active interest in a live planning application. You have just told us that you are enthusiastic about your job and take a great interest in it, but you signed off that answer without asking your officials about the background to the First Minister's involvement and what discussions he had had with the junior minister or the chief planner.

John Swinney: Excuse me, convener, I just said that I discussed the information with my officials who prepared the information for me, upon which I approved the answer's wording.

The Convener: Did you speak to the chief planner?

John Swinney: With the greatest of respect, convener, I think it is unfair of you not to reflect properly the words that I have put on the official record.

The Convener: I asked a straight question and I expected a straight answer.

John Swinney: And I gave it to you.

The Convener: I asked you whether you have had discussions with Stewart Stevenson on the Aviemore development—have you or have you not?

John Swinney: No, I have not had discussions with Stewart Stevenson on Aviemore.

The Convener: Have you discussed that issue with the chief planner?

John Swinney: No, I have not.

The Convener: You admitted that the chief planner spoke to the First Minister, but you never asked the chief planner what they discussed or asked whether that was proper. What advice did you get from your officials when you signed off that answer?

John Swinney: I would get with that a background note that explains the detail that underpins all those discussions, to some of which I was party. I would be party to the discussion on the national planning framework. I was party to the discussion on the Forth replacement crossing. I was not party to the discussion on Aviemore.

The Convener: So you felt it completely appropriate that the First Minister, in his ministerial role, should have an active involvement in a live planning application, despite the ministerial code?

John Swinney: I think it probably was appropriate, bearing in mind the fact that on 19 December the First Minister responded to a letter about the Macdonald Aviemore Highland Resort Ltd from a gentleman called Danny Alexander MP, whose address is the House of Commons and who had written to the First Minister on the subject on 11 December. The First Minister was also responding to a letter from a lady called Rhoda Grant MSP, who represents the Highlands and Islands. The First Minister also replied to a letter from a lady called Mary Scanlon MSP on the subject. I think, therefore, in terms of—

The Convener: Why did he not just refer them to the chief planner and explain that it would be inappropriate, given the ministerial code, for him, as the First Minister, to intervene directly in a live planning application? The area is not in his constituency and he never consulted anyone—that seems to be the way we get to the chief planner on a live planning application.

11:30

John Swinney: I have no idea where you are going with this, convener.

The Convener: There are serious questions that need to be answered. We may have to take the First Minister's advice and write to him with those questions. Okay?

John Swinney: Perhaps you will. What is crystal clear is that the First Minister received letters from a Liberal Democrat MP for the constituency, a Labour MSP and a Conservative MSP, and he did those members the courtesy of giving them a response and ensuring that the concerns that they expressed to him were being properly addressed by the Government. I do not think that that is in any way an unreasonable—

The Convener: And you believe that it is consistent with the ministerial code that the First Minister should seek a meeting with the chief planner about a live planning application?

John Swinney: Yes.

The Convener: You do—well, we will examine that.

John Swinney: He did not seek a meeting; he sought an update on the progress of the application in order to ensure that he could properly address the concerns that were drawn to his attention by members of the Westminster and Scottish Parliaments. I think that that is an entirely reasonable thing for the First Minister to do.

The Convener: Certainly questions remain unanswered. Thank you for your attendance here this morning; we appreciate your giving your time.

11:31

Meeting suspended.

11:35

On resuming—

“Firm Foundations”

The Convener: We need to proceed—Kenny Gibson is giving an interview.

Item 3 on our agenda is evidence on the housing consultation paper, “Firm Foundations: The Future of Housing in Scotland: A discussion document”. We will take evidence from Nicola Sturgeon MSP, the Cabinet Secretary for Health and Wellbeing; Mike Foulis, director of housing and regeneration in the Scottish Government; David Rogers, deputy director with responsibility for housing markets and supply; and Andrew Scott, deputy director with responsibility for social housing. I welcome all the witnesses. The cabinet secretary is not obliged to make an opening statement, but if she has one, we would be happy for her to kick off proceedings with it.

The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon): I am grateful to the committee for giving me the opportunity today to discuss “Firm Foundations”. As members know, it is a wide-ranging document that sets out ambitious and radical proposals for reforming and modernising housing policy, so that we can have a housing system that meets fully the range of housing requirements and—just as important—does so on the basis of higher environmental and design standards.

At the heart of “Firm Foundations” is our proposal to set a national goal of raising the rate of new housing supply to at least 35,000 houses a year by the middle of the next decade. That is 10,000 a year more than the current rate of house building, which is, without doubt, an ambitious goal. However, we must achieve a step change in housing supply if we are to address the issue of declining affordability in the market and the additional pressure that that places on a social rented sector that is already stretched. We believe that we can achieve that step change through challenging and supporting local authorities, developers and builders to adopt a more strategic approach to setting and meeting targets for new house building.

“Firm Foundations” acknowledges the importance in modern society of affordable home ownership but, crucially, also recognises that a housing policy that serves all Scotland’s needs must provide choice and variety of housing to rent as well as housing to buy. Consequently, the discussion document contains a range of proposals that address every element of the housing system.

Through LIFT—the low-cost initiative for first-time buyers—we aim to expand assistance for first-time buyers, especially through Government grants and shared equity schemes, working with private lenders and investors. We want to reverse nearly 30 years of the running down of local authorities’ landlord role and are proposing incentives for local authorities that have the ability to fund new council housing through prudential borrowing.

We want to safeguard all new social housing for future generations by ending the right to buy for all new social housing that is built by local authorities and housing associations. To ensure that public expenditure supports the maximum possible number of new houses for social rent, we propose fairly radical reforms to how we award subsidy to housing associations which, as a group, will continue to deliver the vast majority of new social housing.

“Firm Foundations” also recognises that the private sector has a large role to play in providing choice and variety. We propose tapping into the sector’s potential to assist us in meeting the 2012 homelessness target by giving local authorities more flexibility to make wider use of the private rented sector, where it is considered that that will meet the needs of homeless people.

The measures that I have outlined and all the other proposals in “Firm Foundations” have one common aim: to increase choice and affordability across the whole range of tenures, on the basis of constantly improving standards. I am happy to answer any questions that members have.

The Convener: Thank you. Kenny Gibson has now returned from his moment of fame. We agreed that he would open this question-and-answer session.

Kenneth Gibson: I apologise for not being here at the beginning of the minister’s statement, but I heard quite a lot of it.

You made some comments about housing supply. As you will be aware from “Firm Foundations”, over the past 10 to 15 years the figure for new housing supply in Scotland has varied between 20,000 and 25,000 units. Between 2002 and 2006, there was a 72 per cent increase in price, but supply increased by only 2 per cent over that period. That shows that supply is not responsive to demand, as one would expect in a normal market. Given the volatility in the housing market, what steps will the Scottish Government take to ensure that housing availability is on an upward trend, let alone to ensure that it meets the target of 35,000 units by the middle of the next decade?

Nicola Sturgeon: That is the most pertinent question for the discussion. I hope that we all

share the view that we must increase housing supply in the next few years. We have set an ambitious goal for house building. It has been acknowledged throughout the range of opinion that the target is ambitious, but also that it is important to set such a target so that we know what we are working towards. When we launched "Firm Foundations" in October, I was encouraged by the responses from those in the construction industry and the house-building sector who were confident that they could make a positive contribution to meeting the target. The target applies to all tenures of housing, which is right because we want to promote choice and variety but, within that, we want to increase the supply of social rented housing.

Again, I know that that objective is shared throughout the spectrum of opinion. Many of the proposals in "Firm Foundations" are about how we will do that. We are increasing substantially the investment in affordable housing for rent, but we have made no secret of the fact that we must also get more for our money. I dare say that committee members might want to talk about that in more detail. As members know, the Minister for Communities and Sport chairs the housing supply task force, which is considering barriers to housing supply. The task force is doing positive work and will continue to do so. As members will know from the consultation document, we have a range of measures that are intended to increase supply. We are in a challenging environment, but there is no doubt that, to provide choice and availability of housing with affordable prices and rents, we must increase supply substantially. We are focused on doing that.

Kenneth Gibson: What actions has the housing supply task force identified to date?

Nicola Sturgeon: The task force is examining a range of issues on planning, particularly geographical issues, for example in the Lothians. It will continue to consider those issues and to propose solutions when possible. That is work in progress. The Minister for Communities and Sport chairs the task force and is leading it effectively.

Kenneth Gibson: You touched on planning, which is important. Developers have expressed to me their exasperation about the time it takes for applications to go through as well as the expense and the laborious nature of the process. Sometimes, there is a lack of co-operation from planners in that they do not express exactly what they seek from developers. When planners give caveats and say that they are unhappy with a development, they are not always forthright in saying why they are opposed to it or what they would like to be changed. I realise that the new planning legislation has a role, but is thought being given to how we can streamline the process and

reduce the cost of planning applications so that we can get delivery on the ground much more effectively and quickly?

Nicola Sturgeon: The planning legislation has been reformed and modernised and it will bear fruit in the next few years. The planning framework must strike the right balance in considering developers' needs and our needs as a country to increase housing supply, while giving communities the opportunity to have their say and make their voices heard. You will know that consultation is under way on the national planning framework 2 and Scottish planning policy 3. Some of the issues that you raise are exactly those that the housing supply task force will consider. It aims to consider the more nitty-gritty elements about blockages and barriers and to come up with solutions. It is early days in the work of the task force, but I have a lot of confidence that, in the fullness of time, it will produce practical proposals.

Kenneth Gibson: The homestake pilot is being rolled out in six more local authorities. Why have those local authorities been chosen for the pilot?

11:45

Nicola Sturgeon: We have picked areas where there is great pressure—hot spots. We want the new areas that we have added to the pilot scheme to include a mix of urban and rural areas, so that we can test the effectiveness and success of the approach. Edinburgh and the Lothians have already given us food for thought, and there are lessons to be learned from that pilot. The new pilot, for which earlier this week we announced £24 million of funding this year, will involve a more targeted approach than the original pilot in Edinburgh and the Lothians. For example, it will do more to target those who are currently in social rented housing. If we can help those people in social rented housing who are able to get on to the property ladder to do so, we will have a win-win situation—not only will we help them, but we will free up more housing for social rent.

Other changes have been made. For the first time, threshold prices will be set. The initial pilot in Edinburgh and the Lothians indicated that what was then homestake was helping to fund aspiration in the housing market, rather than simply need. There is nothing wrong with aspiration, but we must ensure that we use the public funds that are available to us to help people who are genuinely in need. It is the right decision to extend the pilot to six new areas in which there is real pressure. We have a lot to learn from that, as we seek to extend the scheme in future.

Kenneth Gibson: The reason for my question is that the Isle of Arran in my constituency has the highest per capita level of homelessness and the

highest house prices because of the desirability of the area. Does homestake have to be rolled out to an entire local authority area? Can specific areas within local authority areas not be chosen for pilots? Demand may be very low in some parts of a local authority area but very high in others.

Nicola Sturgeon: We will consider further roll-out of the scheme as we learn the lessons from the pilots that are already established. Members will be aware that we have rolled out the scheme to Aberdeenshire, Aberdeen city, Moray, Highland, Stirling and Perth and Kinross. Concerns have been expressed that a more national roll-out of the policy would lead to inflationary pressures, so we need to ensure that we proceed sensibly and in a measured way. I think that we have taken the right approach, but we will consider further roll-out as and when that is appropriate.

The Convener: I have a small question about the housing supply task force. When we took evidence from members of the task force, we—and, to an extent, they—were surprised that they had not been asked to publish a report. What was the thinking behind that decision? There is general agreement that a report by the task force might aid the debate on the barriers and real difficulties that we face in seeking to provide appropriate housing in areas where it is needed.

Nicola Sturgeon: That is a legitimate question. We did not want the housing supply task force to be a body that did a lot of work to produce a big report that ran the risk of sitting on a shelf somewhere. It is intended to be more of a working group that looks at issues and comes up with solutions as it goes along. That is a better way of proceeding. However, the task force will produce a summary of its initial findings, probably around the turn of the financial year. That will give people an opportunity to reflect on the work that it has done and to comment on some of its early findings and the initial solutions that it is proposing.

The Convener: I will leave it at that, as many other members have questions.

Bob Doris: I want to ask a few questions about how we can get better value for money from the housing association grant. I start by noting the significant increase in HAG subsidy per unit that has taken place in recent years. In the previous financial year, that cost rose from £52,000 to £79,000. Why has it risen so dramatically?

Nicola Sturgeon: I might not be able to give much insight into why the grant has risen so dramatically because I have been in my post for a relatively short time. Housing associations do a fantastic job; many in my constituency are first class. However, I hope that we can achieve some consensus on the fact that the level of subsidy per housing unit is unsustainable. If we do not tackle

that to obtain more for our money, notwithstanding the significant increase in investment that we have secured for the next comprehensive spending review period, we will not deliver the increase in the number of houses for social rent that all of us want.

I will give the committee some bald statistics. The average grant per new unit is £79,000 in Scotland, whereas it is £62,000 in England. However, the figures in England vary widely. In Yorkshire, the average grant per unit is as low as £55,000. Most people accept that the figure here is unsustainable. One or two theories for the level have been advanced. One relates to land costs in Scotland, but when we compare the overall cost of building a new house in Scotland with that in England, we find that the costs are broadly similar, so I do not consider that explanation to be adequate. The other theory that is often presented concerns the fact that Scotland has lower rents, which I think all of us want to continue. Lower rents account for a proportion of the grant subsidy differential, but further study suggests that they account for only about a third of that. Even when we take into account Scotland's lower rents, we still have much higher subsidies than England has.

We must tackle that situation. I am sure that we all share the objective of increasing the number of houses that we build for social rent. We can do much of that with the increased investment that we have secured, but if we want to go further, we must get more for our money. That is why we will shortly consult on efficiency measures for the next financial year and, beyond that, we will consult on changes that we want to make in the longer term.

Bob Doris: As a list MSP for Glasgow, I have met Glasgow City Council. One of its concerns in administering the HAG is that the clock is always ticking on the use of that money, which must be used because it cannot be carried over to a following year. Has that arrangement now been altered so that such money can be carried over? If so, will that situation continue? The city council has been concerned about that. If the HAG moneys could be carried over, the council, in conjunction with social landlords, could use them more appropriately rather than rush into developments to avoid losing money.

I am interested in having more detail on the idea of a lead developer among housing associations. Would that compromise the independence of smaller housing associations, which might feel that they were tagging along on the back of a lead developer? What checks, balances and safety mechanisms would be put in place? We all agree that we must reduce the unit cost of £79,000 to obtain a far better bang for our buck from the significant investment in the social housing sector.

Nicola Sturgeon: Thank you for making those important points. HAG money cannot yet be carried over, but we are happy to discuss that as part of the wider reforms to the grant regime. The point that you make has been made by Glasgow City Council and other councils and we need to address it in partnership with them.

On the lead developer proposal, I acknowledge and have heard the concerns of some smaller housing associations that the changes that we propose, and on which we will consult, to reduce the unit cost might compromise or undermine the viability of smaller housing associations. I make it very clear that that is not our intention. I make the general comment that I am a fan of housing associations. Small housing associations do a good job and are very good landlords, in the main. Nothing that we propose is intended to undermine them or their viability. However, as you acknowledge, we need to have more efficiencies in the system. Having a lead developer is one way of doing that.

Lead developers would be encouraged to work in combination with smaller housing associations and to build houses for them, which would perhaps be handed back to them. Using a lead developer is an important part of the proposals that we will consult on; the intention is to use that as a way of driving efficiencies in the system rather than undermining smaller housing associations.

Bob Doris: I have a final question about choice in the housing market. We are committed to the social rented sector and we are looking at initiatives such as LIFT to get people into the private market as owner-occupiers. There is talk of the mid-rent sector in "Firm Foundations". As someone who might be looking to buy in the near future, I would choose to buy because it might be the only show in town for someone in my position. I might also be happy to move into the mid-rent sector if my experience of that sector in Glasgow had been better. I am keen to know how you will promote the mid-rent sector and whether you think that that would be a good use of taxpayers' money.

Nicola Sturgeon: You have read in "Firm Foundations" that mid-market houses for rent have a role to play for the very reasons that you talked about. Many people find it difficult to get social rented housing in the area of their choice, and they might not be in a position yet to get their foot on the first rung of the housing ladder. There is a lack of houses for mid-market rent, which is why we included that in "Firm Foundations" for further consultation on how we might encourage more provision in that part of the market.

Bob Doris: I am interested in that answer. My point was about making the mid-rent sector a

positive choice for people who can afford to buy, but who might decide to go down that other avenue. A mixed economy in the housing market would be desirable in order to give consumers more choice.

Nicola Sturgeon: It is about choice. All the evidence shows us that, rightly or wrongly, the vast majority of people aspire to home ownership. That is a fact. Most people want to buy a house if they possibly can. Some people cannot and might never be in a position to do so and that is why I believe passionately that we have to increase both the supply and quality of the social rented sector.

Over the past few years, the social rented sector in Scotland has become more marginalised than it used to be; I would like it to become more mainstreamed again. There is also a category of people for whom home ownership might at some point be a viable option, but not now. Providing extra variety and choice through houses for mid-market rent is a thoroughly sensible idea to float.

David McLetchie: Good morning, cabinet secretary. I was interested when you referred in your opening remarks to reversing a 30-year rundown in the provision of social housing by councils. I have some figures from the Scottish Parliament information centre. I presume that you are aware that, over the past nine years for which we have statistics, from 1998 to 2006, the total number of houses built by local authorities in Scotland was 497. I wonder whether you are also aware that, over the nine years prior to that, from 1989 to 1997, the total number of houses built by local authorities in Scotland was 10,213—over 20 times the number achieved in the following nine years.

Nicola Sturgeon: I have the statistics in front of me. I also know that in 2006, which is the most recent year for which we have statistics, local authorities built a grand total of six houses. Local authorities have a role to play in house building and providing houses. That is why we are proposing a scheme to encourage local authorities to build more houses where they have the capacity to use prudential borrowing to do so. The rate of subsidy that we would provide to local authorities in such circumstances is likely to be much lower than the rate of subsidy to housing associations because of local authorities' access to prudential borrowing.

We want to increase the variety and choice available. I have been encouraged by some of the comments from local authorities. I read this week that Aberdeen City Council has said that it is keen to use prudential borrowing to start building houses again but that a key factor would be our going ahead with the proposal to end the right to buy on new-build social housing.

12:00

David McLetchie: Page 42 of “Firm Foundations” suggests that local authorities could use prudential borrowing to deliver between 500 and 600 houses a year. If my arithmetic serves me correctly, over a nine-year period—since we are comparing nine-year periods—your aspiration is to build about 5,000 houses through local councils, which is approximately half the figure that was achieved in the last nine years of the Conservative Government. Is a fair summary of the limit of the Government’s ambitions that it wants to do half as well as the Conservatives?

Nicola Sturgeon: We are coming from a base of local authorities building six houses in 2006.

David McLetchie: That is not my responsibility.

Nicola Sturgeon: I was not blaming you for it. I am trying to be consensual this morning, so I was not going to cast blame in any direction. I am happy to confirm that the number of houses built by local authorities in 2006 was not the fault of the Scottish Conservative party. The figure for 2006 indicates that there is greater potential for local authorities to contribute to housing supply, and we want to encourage them to do so. The extent to which they do that is down to them. I have been encouraged by the enthusiasm local authorities have shown for the proposal since we published “Firm Foundations”, but clearly it is down to them and their capacity to use prudential borrowing. We are certainly willing to incentivise that to make it more possible.

David McLetchie: I will move away from that point and ask a question about the proposed £2,000 grant that would be available to first-time buyers. Page 22 of “Firm Foundations” indicates that you will work with mortgage lenders and investors to assess the proposal. How far has that assessment process gone? When do you expect to publish conclusions on the desirability or otherwise of the proposal?

Nicola Sturgeon: As members know, the consultation on “Firm Foundations” finishes at the end of the week. In a reasonable timeframe after that, we will make clear which proposals we want to take forward, how we intend to do so and on what timescale. It is no secret to committee members that the Scottish National Party thought that a first-time buyers grant could make a useful contribution to helping people on to the housing ladder. That remains the case, but as a minority Government we have listened to the views of other people and have committed to consulting on the issue before we reach a firm decision. We have not yet reached any firm or final decisions.

On various occasions since the election last May, committee members have asked me to reconsider the policy of a first-time buyers grant,

for reasons that I will not rehearse. We are consulting and will make our views known as soon as possible after the consultation ends.

David McLetchie: So a separate consultation, assessment or discussion on the issue is not taking place with mortgage lenders and investors, which is how the situation is presented in “Firm Foundations”. It is simply one of the issues covered in your consultation.

Nicola Sturgeon: As we also say in “Firm Foundations”, we are having discussions about how mortgage lenders and investors can help us to help first-time buyers more. We want to discuss a range of proposals. You may say that the current climate around mortgage lending will make such proposals more difficult than we envisaged when “Firm Foundations” was published, but we want to see what contribution mortgage lenders can make to, for example, furthering the concept of first-time buyers grants and extending the help that we can give through the open market and new-build shared-equity schemes. We also want to consider how we can encourage mortgage lenders to put on to the market more attractive mortgage products for first-time buyers. We want to have discussions on all those issues to expand the range of assistance that we give to first-time buyers.

Jim Tolson: You will be aware from discussions that we have had in the Parliament that I have a long-standing concern about the number of people in our communities, particularly in the social rented sector, who cannot access housing that meets their families’ needs. I am sure that you know that many people wait for years on a housing list to get suitable accommodation and that their needs often change over the years. The system is certainly not flexible enough to meet many people’s needs and aspirations. Although I support the initial stance in “Firm Foundations” on removing the right to buy for new properties, have you assessed that proposal and what details can you give us on it? Have you considered taking a further step and removing the right to buy for existing properties, so that fewer and fewer people lose out on the houses that are purchased through the right to buy?

Nicola Sturgeon: When I launched “Firm Foundations”, I made it clear that if we are to invest ever-increasing amounts of public money in increasing the supply of social rented housing, it makes no sense to continue selling off that housing. That is why we propose to end the right to buy for new-build properties. We are still in a consultation period and we will listen to all the views that are expressed but, at this stage, we do not consider that it would be right to remove the right to buy for existing houses. As you are aware, the consultation paper suggests that if we remove

the right to buy for new-build housing, an exception might be made for tenants who move into such housing because of demolition or refurbishment of their previous house. We have not yet taken a firm decision on that. We are considering the views that are expressed in the consultation.

We will continue to consider the changes that were made to the right to buy in the Housing (Scotland) Act 2001—which apply to modernised tenancies—such as reduced discounts, the ability to introduce pressured-area designations and the ability to have locally varied discounts, although no local authority has yet exercised that power. I know that the member has suggested that some of the provisions of modernised tenancies could be extended. We will consider those issues as we examine the views that are given during the consultation. I am in no doubt that ending the right to buy for new-build housing is the right thing to do. I am sure that Mr McLetchie will be interested to hear me say that the right to buy has been good for many people in Scotland—it has helped many people into the housing market, which is a good thing. However, given the circumstances, the present environment and the pressures in the system, it is time to look again, which we have taken the opportunity to do.

Jim Tolson: I welcome those comments and I agree with many of them. That is my personal view as well as my political stance.

I move on to the financing of the proposals to reinvest in housing stock and build new houses. I am particularly interested in the prudential borrowing framework. It has been suggested that that framework is more suitable for authorities that have relatively low levels of outstanding debt. How will the proposals assist local authorities that have higher levels of outstanding debt and in which stock transfer proposals are not being progressed?

Nicola Sturgeon: Many local authorities still have capacity for prudential borrowing, even taking into account their requirements to service debt and meet the housing quality standards. At the risk of repeating my answers to questions from Mr McLetchie, I say that it is right that we encourage those authorities to consider using that facility. Virtually all registered social landlords have said that they will meet the housing quality standard by 2015—obviously, whether they do so depends on their performance in the next few years, so it is important that they focus carefully on that. Some local authorities, for example the City of Edinburgh Council and Renfrewshire Council, are experiencing more difficulty with that, because they have high levels of debt and because housing stock transfer was proposed but not accepted by tenants.

As you will imagine, we are in discussions with those local authorities to consider what assistance we can provide to give them the best chance of meeting the standard. Those discussions will continue. We have had confirmation from the Treasury that housing stock transfer in which ownership of the stock is transferred is the only circumstance in which debt write-off will be considered. I regret that position, but it is the Treasury's position nevertheless.

"Firm Foundations" discusses other options such as arm's-length management organisations, which we are encouraging local authorities to consider. Establishing ALMOs would not lead to debt write-off, but the English experience has been that they can increase considerably the efficiency of the management of housing stock. ALMOs are an option worth pursuing for local authorities, especially those with difficulties that have been mentioned.

Jim Tolson: You touched on the different subsidy options that exist. Will you indicate in more detail how subsidies will work in practice? For example, will they be provided through the affordable housing investment budget? If so, what impact will that have on development programmes for RSLs?

Nicola Sturgeon: We await local authorities' responses to our proposals. Are you referring to subsidies to local authorities or the general subsidies that we discussed earlier?

Jim Tolson: I am referring to subsidies to local authorities.

Nicola Sturgeon: The rate of subsidy to local authorities will be significantly lower than the rate of subsidy to housing associations, because local authorities have access to prudential borrowing. Before we start talking about what the rate of subsidy might be, it is important that we receive and assess local authorities' responses. Many of the initial responses have been positive, but a detailed discussion needs to be had before I can give a detailed answer to your question.

Johann Lamont: My first question relates to low-cost home ownership. I can never remember what LIFT stands for, but you will know. Why was an announcement on roll-out made before the consultation had been completed?

Nicola Sturgeon: We decided that the issue was important and that we wanted to roll out the scheme—the low-cost initiative for first-time buyers. In the consultation period to date, there has been no suggestion that people thought that that was a bad idea. It was important to allow the pilot areas to know with clarity and certainty what the arrangements for the coming year would be. That is why we took the decision.

Johann Lamont: It might have been reasonable for you to wait until all the consultation responses had been received, because how we target support to encourage people into low-cost home ownership is an issue. There was always a tension with the homestake policy. You have decided to roll out the scheme in areas of high economic activity—what you described as hot spots—rather than in areas of regeneration and in communities in which there have been challenges, where the policy motive might be to have mixed tenure. That is a hard issue with which to wrestle. Why did you make the significant move of stating your priority before the consultation was complete?

Nicola Sturgeon: I agree that this is a hard issue on which judgments must be made. You asked why we announced our decision before the consultation had ended. I remind members that we have announced a pilot programme, rather than a final national roll-out. The views that have been expressed in the consultation and the results of and evidence from the pilot projects will inform how we decide to proceed in the longer term.

Targeting is important. One criticism of the homestake pilot in Edinburgh and the Lothians—like Johann Lamont, I struggle sometimes with the changing terminology in this area—was that it was not targeted enough and that the previous Administration had not fine-tuned the scheme sufficiently. The roll-out to six additional areas that we have announced involves a much more targeted scheme. Maximum prices will now apply, so that people do not use the help that is available to get houses that would otherwise be outside their price range, as was perhaps the case in Edinburgh. We have introduced more targeting in relation to income multipliers, so that people do not use the scheme to borrow much more than is sustainable for them. This phase of the pilot will be much more targeted than the previous phase. However, the pilot may show that, if we are to continue with this approach, the scheme should be still more targeted.

12:15

Johann Lamont: But, to be fair, all the areas that you have identified are economic hot spots and not areas that need regeneration. If you wanted to test the effectiveness of the pilot scheme, would it not have been sensible to have used a range of areas, including, for example, some areas in Glasgow? I understand that you have an urban-rural divide across the areas, but you do not have the kind of divide that I have described. Is that a concern? The proposed £2,000 grant for first-time buyers appeared to be accessible to everyone, but there were faults with that and the grant is now to be targeted in the way that I have just described.

Can I move on to—

Nicola Sturgeon: Sorry to interrupt you, but it is important to point out that what we have been talking about this week is the open-market shared-equity scheme. There is also the new-build equity scheme, which is a national scheme that is available in areas other than the six pilot areas for the open market scheme.

Johann Lamont: But you would accept that the pilot areas are uniform in that the key criterion is that each area is an economic hot spot.

Nicola Sturgeon: I would certainly accept that they are housing hot spots. Issues such as increasing supply and helping people on to the housing ladder are complex problems. If there was a magic bullet solution to them, we would probably all have stumbled across it by now. I accept some of the points that you have made, and we will continue to consider them as we test the pilots. If those points are borne out, we will bear that in mind as we decide how to roll out the pilot scheme further.

Johann Lamont: I want to pursue the issue of efficiencies. Among community-controlled housing associations, there is concern about the assertion that there are inefficiencies in the system. My experience is that such housing associations are hugely efficient. A relevant comparator is the level of efficiency in the Glasgow Housing Association compared with that in local community-controlled housing associations. In my view, the efficiency of the latter is not accidental but arises from locality.

Will you respond to points made by Brian Gegan, the chair of the Scottish Federation of Housing Associations? He has said:

“The assertion that more can be produced from less has not been substantiated by evidence other than more subsidy has been made available and used in the last 5 years. There has been no analysis of the impact of rising costs such as land, materials, labour, constraints of funding annuity,”

and so on. Do you now have evidence that there are huge inefficiencies in the system? It has been pointed out to me that housing associations have increased expenditure because they have taken on more significant roles, for example in welfare advice, sustaining tenancies, supporting people and addressing issues of estate management.

Nicola Sturgeon: I repeat what I said earlier. I am a fan of housing associations and their work. Many housing associations in my constituency in Glasgow perform a valuable role in doing a lot of work that is wider than just providing housing. I know that it is not appropriate to answer a question with a question, convener, and I am not doing that, but I repeat the statistics that I used earlier: £79,000 average subsidy per unit in Scotland; £62,000 average subsidy per unit in England. We know that perhaps up to a third of

the difference between the two figures is related to the fact that we have lower rents in Scotland, and our analysis suggests that building costs and land prices have been rising in Scotland, but when we look at the total costs per unit, we see that there is not much of a difference between north and south of the border. That then begs the question: what else is at play to account for the substantial gap between the subsidy figures for Scotland and England? I appreciate that local housing associations in Scotland do wider work, for some of which there are separate funding streams, but I do not accept that the gap can be explained away in that fashion.

I do believe that there are inefficiencies in the system. I do not mean that as a criticism of local housing associations; I simply state it as a fact. We must tackle that if we are to increase the supply of social rented housing in the way that we want.

Johann Lamont: But do you accept that you need to do more work on the reasons for that gap? For example, one reason might be that there are fewer community-controlled housing associations down south. Further, perhaps it is not an inefficiency if the money that is spent makes communities sustainable. Certainly, community-controlled housing associations would assert that there are diseconomies of scale in scaling up. The message from Glasgow is that scaling up does not work. More might be spent in subsidies for a housing association, but it might mean that there will still be a community in which people want to live 15 years down the track. Is work being done to interrogate the issue of efficiency?

Nicola Sturgeon: We continue to do work around the issue. The reason why we are committed to further consultation on the range of efficiency measures that we want to bring in, in the next financial year and in the longer term, is that we are committed to getting to the heart of the matter.

However, members of the Parliament—and people in Scotland in general—cannot have it both ways. Members and organisations are right to lobby me to say that we need a vastly increased supply of social rented housing, and I agree, but we have a finite budget—although we have an increased budget over the next three years compared with the previous three years. We can debate variations in subsidy levels but, unless we do something about them, we will not achieve the increases that we want.

Johann Lamont: A lesson that we have learned from history is that big house-building programmes need something else attached to them if they are to be effective.

Community-controlled housing associations are concerned that the emphasis on housing supply in

“Firm Foundations” is such that the need to regenerate, improve and sustain housing stock might be disregarded. You said that your budget is finite. The danger is that the budget will be skewed towards increasing supply, which is not much of an issue in some areas, instead of towards maintaining and improving existing stock.

Nicola Sturgeon: The area is full of tensions, because there are many objectives that we want to meet. I make no apology for saying that we want to increase housing supply. My surgeries—and yours, I know—are full of people whose housing needs are not being met, so even without looking at the statistics I know that we need to increase housing supply across the range of tenures.

As I have often said, and as I said to Patricia Ferguson in the Parliament when we launched “Firm Foundations”, we support and encourage the other work that some local housing associations do around regeneration and antisocial behaviour—some do such work better than others. We will shortly enter discussions with housing associations around wider-role funding. All that is extremely important, but we have to strike a balance, because we need to meet a number of objectives.

Alasdair Allan: You have made it clear that the Government regards the private rented sector as playing an important role in meeting the Government’s aspirations on housing provision. What consideration has the Government given to parts of Scotland where there is no meaningful private rented sector? I am thinking not just about my constituency, the Western Isles, but about parts of Lanarkshire, for example. Where do we begin in communities that have no private rented sector?

Nicola Sturgeon: The private rented sector in Scotland accounts for around 8 per cent of all housing provision, which is not substantial. However, where that sector is available, we should try to ensure that it makes a greater contribution. We have said that when appropriate—I stress “when appropriate”—we want to enable local authorities to make more use of the private sector in meeting the homelessness target. There are homeless people who, because of their circumstances—particularly if they are young and mobile, for example—might find that the private sector caters for their needs better than does the social rented sector, at least for a period.

Therefore, taking account of the reforms that have taken place and the review of the sector that we want, we believe that the private sector has a contribution to make, and we should try to ensure that it makes it. However, you are right to suggest that its contribution will be much larger in some parts of the country than in others.

Alasdair Allan: The Government seeks to address the needs of homeless people. What role do you envisage for the private rented sector in that regard? Are local authorities adequately funded to ensure that the private sector can play that role?

Nicola Sturgeon: All local authorities are working to meet the homelessness target. We are about three quarters of the way towards meeting it already, with about 77 per cent of homeless people being classed as in priority need—the homelessness target is about ending the distinction between priority need and non priority need. There are some encouraging signs.

Meeting the targets is still a big challenge—I do not underestimate it—but the number of people registering as homelessness is reducing and the number in permanent accommodation is increasing. The number of people in temporary accommodation is also increasing, but some of the signs are encouraging. There is still a big job of work to be done, and the homelessness monitoring group will report on progress towards the target. The previous Administration set local authorities interim targets for 2009. We will keep those targets in place and local authorities are working on their plans to meet them.

Patricia Ferguson: Good afternoon, cabinet secretary. At a previous meeting, when your colleague Mr Maxwell was with us, we discussed the ending of the right to buy—which you have touched on—and we discussed at some length the definition of forced moves. Has the Government's thinking on that developed since then? The committee was concerned that the definition was wide and we were at pains to understand the thinking behind it.

Nicola Sturgeon: We have not reached a firm conclusion on that yet, and we will not do so until the consultation ends. I read the *Official Report* of the meeting that you mentioned, and I think that you make a reasonable point. It could be argued that when anybody whose housing is not adequate moves, that is a forced move. We have to find the right balance.

In "Firm Foundations", we suggested exempting people who have to move because of demolition or refurbishment from the effects of ending the right to buy. We estimate that there are 10,000 to 15,000 such people in Scotland. Some people argue that we should not have such an exemption and others argue that the exemption should be wider. We must treat people fairly and ensure that people who have an existing right to buy are not unfairly deprived of that right. On the other hand, we do not want to open up the number of exemptions to the point that we undermine the policy altogether. As usual in life, striking the right balance is not easy, but I assure the committee

that, as we reach our final decisions, we are focused on getting the balance as right as we possibly can.

Patricia Ferguson: I will move on. I appreciate the rationale behind the incentives for new council housing and would not necessarily disagree with them, but I wonder where that leaves the city of Glasgow, for example. Given that stock transfer has taken place there, the local authority would not be the most natural recipient of any grant. Is any thinking going on about that scenario?

Nicola Sturgeon: Obviously, we cannot undo what has already happened with Glasgow City Council and the GHA. I am sure that plenty of people in Glasgow City Council would say, off the record, that they would like to have a new role in house building. However, for the reasons you mentioned, that is perhaps not as practical as it is in other areas.

I return to the comments that I made in response to Mr McLetchie. The measure is about incentivising local authorities where it is possible for them to act. It will not be possible for every local authority to act, because of their prudential borrowing capacity or for the reasons that you mention. Some local authorities might decide that they do not want to take on the role. However, where local authorities are both willing and able to take it on—a number of them have said that they are both—we think that it is right to consider how we incentivise them to do so.

Patricia Ferguson: That is interesting.

As you will know from our previous exchange in the chamber, I am concerned about lead developers. Many of the points that I would have made were touched on in your exchange with Ms Lamont. Does the number of housing suppliers concern you? I can think of a city, which I will not name, in which there are, I understand, about 17 housing providers for about 7,500 tenancies. Should you consider that issue, as a starting point?

Would having a lead developer make a difference, given the issues that dictate unit cost? I am aware of a regeneration area in Glasgow where a private developer who is building for the social rented sector and the private sector is providing a three-bedroom home in the same unit footprint in which the RSL will have a two-bedroom home. Of course, the builder wants to maximise his profits. What steps will you take to ensure that standards are maintained and the sustainability of communities is protected? RSLs and, in particular, community housing associations have been good at looking after such issues.

12:30

Nicola Sturgeon: You make reasonable points and I understand where the people who express concerns are coming from. We want and need to deal with the subsidy level, but I do not think that anyone would necessarily look at the situation south of the border, where there are very large housing associations and providers and there is perhaps greater uniformity of provision, and say that that is exactly where we want to go and what we want to do. We must maintain quality and sustainability.

Your point about the number of housing providers who serve a small number of tenants is exactly the kind of issue that we should be considering. Conditions of grant also enable us to protect quality and that is exactly what we intend to do.

As I said, we will have a period of further consultation, which will enable not just housing associations but members and the wider public to engage with us as we come to final decisions on how we tackle an unsustainable subsidy level.

Patricia Ferguson: My understanding is that one reason why the differential might exist between the situation south of the border and the situation here is to do with standards. I think that we all want to maintain, if not improve, the standards that we have.

Nicola Sturgeon: I absolutely agree. We must ensure that we do that. However, I repeat that I believe that we all agree that we must radically increase housing supply. We have an increased budget to help us to do that, but it will not get us as far as we need to go unless we get more out of the money that we spend. That is a simple fact of life.

The Convener: David McLetchie has a final, supplementary point on forced moves.

David McLetchie: Cabinet secretary, you said that you estimate that some 10,000 to 15,000 tenants might have to be rehoused because their homes will be demolished, but you aspire to build 500 or 600 new council houses. I appreciate that the match is not exact—

Nicola Sturgeon: The 500 or 600 new houses are what we envisage for local authorities; that does not include housing association new-build.

David McLetchie: That is true, but the point is that we are talking about 10,000 or so people who are predominantly council tenants.

Nicola Sturgeon: There will be a mixture, but you are probably right.

David McLetchie: That is certainly the case in my constituency—

Nicola Sturgeon: They will predominantly be council tenants and, in Glasgow, GHA tenants.

David McLetchie: Okay. The basic point is that if there is a vast number of people who must be rehoused because their homes must be demolished, whose existing statutory right to buy will be transferred, and if it is reasonable to expect that not all but a fair number of those people will be rehoused in new council housing in their area, the ending of the right to buy might be more illusory than real in many areas.

Nicola Sturgeon: I make a couple of points of clarification. First, the 10,000 to 15,000 people—that is our best estimate—will be rehoused not in one or two years but over a fairly lengthy period—

David McLetchie: Yes, but the new building will take place over a lengthy period—

Nicola Sturgeon: I think that I might end up by agreeing with you, so be patient. Secondly, not all those people will be able or will want to buy. The number of people in that position will be much smaller. However—this is where I come some way towards the point that you are making—that is why, as I said, we must consider carefully whether we want to make an exemption at all, because we need to strike the right balance between being fair and equitable and ensuring that we do not undermine the point of the policy. Those are the judgments that we will have to make.

The Convener: Thank you and your officials for coming. We appreciated the session and we will take a strong interest in the issue as it develops.

12:35

Meeting continued in private until 13:00.

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