LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 30 January 2008

Session 3

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

CONTENTS

Wednesday 30 January 2008

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
3rd 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)
Stewart Maxwell (Minister for Communities and Sport)
Edythe Murie (Scottish Government Legal Directorate)
David Rogers (Scottish Government Housing and Regeneration Directorate)

THE FOLLOWING GAVE EVIDENCE:

Roger Kelly (Royal Town Planning Institute in Scotland)
Alistair Stark (Royal Town Planning Institute in Scotland)

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 30 January 2008

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

Decisions on Taking Business in Private

The Convener (Duncan McNeil): Welcome to the Local Government and Communities Committee meeting. Under item 1 on our agenda, members are invited to agree to take items 6 and 7 in private. I seek agreement to take item 6 in private.

Members *indicated agreement*.

The Convener: I seek agreement to take item 7 in private.

Members *indicated agreement*.

Subordinate Legislation

Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008 (Draft)

10:02

The Convener: Item 2 concerns the draft Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008. I welcome the Minister for Communities and Sport, Stewart Maxwell, who is attending the meeting to take part in the debate on the regulations, and his officials: Edythe Murie from the Scottish Government solicitors development and local government division; Neil Ferguson, a policy delivery manager at Communities Scotland; and David Rogers, deputy director of housing markets and supply in the Scottish Government.

The Subordinate Legislation Committee drew this committee's attention to the regulations in relation to the sectional diagram in the survey report form and a failure to follow normal drafting practice. It considered that neither of those points was likely to affect the regulations' validity or operation.

The regulations are laid under the affirmative procedure, which means that the Parliament must approve them before their provisions come into force. It is normal practice to give members the opportunity to question the minister and his officials prior to the formal debate, as officials cannot participate in that debate.

I offer the minister the opportunity to make any introductory remarks that he wishes to make. He may want to hold back until the start of the debate.

The Minister for Communities and Sport (Stewart Maxwell): If I may, I will make some remarks now, convener. I am delighted to have the opportunity to discuss with the committee these regulations, which are laid under part 3 of the Housing (Scotland) Act 2006. They are not only about the much discussed single survey; rather, they introduce a package of three documents to the house buying and selling process. We have decided to give those three documents the collective title of "the home report". It will provide home buyers with more information about the condition and value of a house than they have ever had before. As the 2006 act places the duty to provide the documents on the sellers, first-time buyers will get them for nothing, which will save them time and money.

The regulations mark a major step in the implementation of a significant improvement to the process of house buying and selling in Scotland. As the committee is aware, the proposals that they help to implement stem from recommendations on

the single survey that the housing improvement task force made in 2003.

The task force identified three purposes behind the introduction of a single survey: to provide better information about the condition and value of a property than is provided by the mortgage valuation inspection that 90 per cent of home buyers currently rely on; to address the incidence of multiple surveys and valuations; and to address the practice of setting artificially low upset or asking prices, which can draw buyers into spending time and money considering properties that they subsequently discover they were never able to afford from the outset.

In the previous session, members of the Parliament, and of the Communities Committee in particular, spent considerable time discussing the merits of the single survey. After coming to power in May 2007, the Scottish Government took stock of the policy in the light of the consultation on the draft regulations and the developing circumstances in the housing market. Last autumn, I met representatives of the various stakeholder organisations on the purchasers information advisory group, which includes selling agents, conveyancers, surveyors, lenders and consumer groups. It became clear to me that the underlying rationale for the policy, as proposed by the housing improvement task force, was as strong as ever.

It is unarguable that a prospective buyer should have good professional information about the condition and value of a house before deciding to make an offer on it. The Scottish Government has continued to develop the regulations, taking full account of the outcome of the consultation and working closely with members of the purchasers information advisory group.

The Housing (Scotland) Act 2006 requires that the seller, or the seller's agent, must make a copy of the prescribed documents available to prospective buyers on request. The regulations prescribe those documents and make other provisions about how and when they should be provided. The prescribed documents are a single survey and energy report, and a property questionnaire. Together, the documents will comprise what is called a home report. We decided to use that name rather than "purchasers information pack" because the information will benefit the seller as well as the purchaser and the documents will not form the weighty pack that was proposed initially by the housing improvement task force.

Although the date on which the regulations come into force is 1 October, the date from which sellers will have to provide a home report will be different. I intend to make a commencement order for the relevant section of the 2006 act so that the seller will have a duty to provide on request the prescribed documents from 1 December 2008. We have chosen that date on advice from the advisory group as it is traditionally a quiet time in the housing market.

I do not propose to go into all the details of the regulations, but will instead highlight the changes that have been made to the draft regulations that were the subject of the consultation paper in February 2007. Before doing so, I should make it clear that members of the advisory group have said that they are content with the changes that have been made to the regulations and have been fully involved in the development of the prescribed documents that are detailed in the schedules.

The "permitted period" in regulation 3 is the maximum period that may elapse between a prospective purchaser requesting the prescribed documents for a house that is on the market and the seller or the seller's agent providing them. The consultation paper proposed a period of seven days. Responses suggested that there was some doubt about the feasibility of such a period at holiday times; we have therefore substituted the period of nine calendar days.

Three documents are prescribed in regulation 4: the single survey; the energy report; and the property questionnaire. The first two documents form the survey report, but for clarity, I will refer to them separately as "the single survey" and "the energy report". The single survey is covered in part 1 of schedule 1 and includes detailed information on the property's condition, accessibility information for the property and an open-market valuation. Although a number of stylistic and minor changes have been made to the single survey, the core content of the document has not changed materially from the version included in the draft regulations that were the subject of consultation. The single survey report format in schedule 1 to the regulations is based on a survey product used by Colleys surveyors, a subsidiary of Halifax Bank of Scotland.

The energy report will contain up-to-date information, as listed in part 2 of schedule 1. The list includes all the information required to produce an energy performance certificate under the European energy performance of buildings directive, together with further information that will help prospective buyers to make their purchasing decision and the eventual buyer to manage the environmental impact of the house into the future. By specifying the list of information in that way, we have made sure that the data collected by the surveyor will allow production of both the energy report and the certificate, avoiding the need for two separate inspections.

The concept of the property questionnaire in schedule 2 was suggested initially by a Law Society of Scotland representative on the advisory group. Many solicitors firms already use their own version of such a document. It will give prospective purchasers, surveyors and solicitors useful information about the property. Some of that information might still require to be confirmed formally during the conveyancing process, but identifying it at an early stage will alert all concerned to relevant issues about the house. At present, all too often such issues become apparent at the final stage of concluding missives, leading to delays and knock-on consequences for both buyer and seller.

The next regulation that has changed since the consultation draft is regulation 6. The proposal that the prescribed documents should be no more than 12 weeks old when the property is brought to the market remains unchanged, but we have added a rider to meet a concern raised by a Law Society member of the advisory group. The regulation now effectively disregards any period of less than 28 days when the house is taken off the market. That avoids the risk of the seller having to commission another survey if a sale falls through or if they have taken the house off the market during a holiday period.

Regulations 7 to 14 specify exceptions to the duties to possess and provide prescribed documents. The exceptions include new and recently converted houses, houses that are unsafe or due to be demolished, portfolios of houses that are considered to be commercial transactions, seasonal or holiday homes as defined by planning legislation, mixed sales such as farmhouses and dual-use properties such as bed and breakfasts.

Only one of the exceptions listed in the consultation draft of the regulations has been amended: the exception in regulation 14 for converted properties. The consultation proposed an exception for properties in the process of being converted, with the duties coming into effect once the house was physically complete. The revised exception from the duties in the 2006 act is for the first sale, but not subsequent sales, of a converted house. Essentially, the regulations now treat converted properties in the same way as new-build properties. That position was reached after extensive discussion with the advisory group. The primary reason for the change was the fact that most conversions are, like new houses, marketed and sold at an early stage to give the developer a sufficiently secure basis on which to proceed with the work.

Other than the changes that I have highlighted, the regulations remain as proposed by the previous Administration in the consultation paper on the draft regulations. The complete package has been thoroughly considered and discussed with the key stakeholders. In our view, it provides a workable and valuable improvement to the Scottish system of buying and selling houses.

The Convener: Thank you for those introductory remarks.

Do members have any technical questions on the regulations for the minister and officials before we move on to the debate?

David McLetchie (Edinburgh Pentlands) (Con): I will ask the minister about the timescale in relation to a seller deciding to put his property on the market. At what point will the home pack have to be available? Will it have to be available from the first day of marketing?

Edythe Murie (Scottish Government Legal Directorate): Section 98 of the 2006 act states:

"A person who is responsible for marketing a house … must possess the prescribed documents in relation to the house."

That means that the minute that a person starts marketing a house, they must have those documents. There is a definition of "on the market" in the act.

David McLetchie: So there will inevitably be a delay in properties being brought to the marketplace, as the seller will have to factor in the weeks that are required for the survey reports to be commissioned and the various questionnaires and so on to be completed.

Stewart Maxwell: I do not accept your interpretation. There is no reason why there would be a delay. The provision of the documents will be part of the normal process of house selling in the future, assuming that the regulations are approved by the Parliament. People will be aware of the process, and when they want to market a property they will ensure that the documents are available. I do not see why there would be a delay in the process.

David McLetchie: I can tell you why there will be a delay in the process. Currently, if you or I wanted to sell a house, we would go to an estate agent. They would come round and prepare particulars, and the house could be on the market within a few days. Under your system, not only will we have to go to an estate agent, but we will have to commission a survey, organise a surveyor, get a report, complete your questionnaire and so on. I suggest that that will be a far longer process than the one that is now in place.

Stewart Maxwell: If you consider the overall length of the house buying and selling process, the later stages will be speeded up, because all the documentation will be available. Much more information will be available, and there will be

certainty because a detailed survey will be available to potential purchasers and to the actual purchaser, so at the end of the process there will be no delay caused by people having to get a survey done.

I accept your point to an extent. If somebody decided on one day that they wanted to put their house on the market the following day, the new system might prevent them from doing so before they had the documentation in place. However, I do not believe that the overall process would be extended in the way that you suggest, because it would be speeded up later on.

David McLetchie: Do you accept that a number of sellers put properties on the market on a speculative basis and that they may be discouraged from doing so by the fact that they will have to pay for such a report before they can market them?

The Convener: I do not know whether we are straying from technical questions on to issues that should be dealt with in the debate.

David McLetchie: I think that some evidence was given about this matter by Friends Provident, which said that the volume of properties on the market might be reduced by as much as 30 per cent—people will be deterred from putting their properties up for sale on a speculative basis because of the additional costs that will be involved. Did you take that into account when framing the regulations and coming forward with your proposals, minister?

10:15

Stewart Maxwell: Even if you wished to put your property on the market on a speculative basis, you would still have to pay for any advertising or marketing that might be needed.

The points that you are referring to are, effectively, to do with the 2006 act rather than the detail of the regulations. The regulations do not change the intention of the act; they just bring it into effect.

David McLetchie: Indeed, the corpus of the regulations brings the whole thing into effect. However, it was open to you to take the sensible decision, which would have been not to proceed with this ridiculous scheme in the first place. My questions, therefore, are perfectly material and relevant.

The Convener: Even I know that that was not a technical question, Mr McLetchie.

Johann Lamont (Glasgow Pollok) (Lab): I want to ask the minister two technical questions. On exceptions, can you refresh our memories on the position that was ultimately taken with regard to properties that are purchased under the right to buy? I remember that when the Housing (Scotland) Bill went through Parliament, there was discussion about housing associations having to provide the information that we are talking about, even though the relationship with the buyer in that circumstance is quite different from the relationship that exists in other circumstances.

Secondly, can you clarify whether seasonal accommodation is different from holiday accommodation? Seasonal accommodation is defined as accommodation that is occupied for fewer than 11 months out of 12. That does not seem to be a hard test to meet for someone who is working away from home for some of the time, which means that the system might be open to abuse.

Stewart Maxwell: The right to buy is not covered by the regulations. Further regulations are being discussed to deal with the right-to-buy issue. David Rogers can explain some of the background.

David Rogers (Scottish Government Housing and Regeneration Directorate): The Housing (Scotland) Act 2006 dealt with right-to-buy purchases completely separately, because they are not marketed to the sitting tenant. There is a separate set of provisions under which regulations can be made to provide information to the prospective purchaser in that circumstance. That will be the subject of a separate work stream.

Johann Lamont: Is the only difference the fact that, in such cases, the property is not marketed? I had understood that the driver behind the home improvement pack was, in part, a desire to empower the purchaser by giving them information. The purchaser is in the same position, no matter who they are buying the property from. However, you are saying that the distinction that emerged in the legislation is attached to the nature of the marketing. What would happen in a private sale, in which agents are not used? Is it the nature of the transaction or the fact that the property is being marketed that means that the information must be provided?

David Rogers: The matter had to be dealt with in two separate sections in the 2006 act. The provisions under which the regulations have been made apply to the marketing of a property. A separate set of provisions in the 2006 act was needed because a right-to-buy property is not marketed, but is sold to the sitting tenant. A separate suite of provisions has been developed under those provisions to ensure that the prospective right-to-buy purchaser is provided with better information on the condition of the house and on the financial liabilities that they may take on.

I have forgotten the second part of your question.

Johann Lamont: It was to do with the definitions of seasonal accommodation and holiday accommodation.

Edythe Murie: Perhaps I should deal with that. There is a reference in the regulations to section 41 of the Town and Country Planning (Scotland) Act 1997, which is the provision that allows local authorities to grant planning permission with the condition that the premises may be used only for holiday accommodation or for limited occupation. Our exception will apply only where that condition has been applied by the local authority to the house in question.

Johann Lamont: Do you have an idea of how many properties will be affected?

Edythe Murie: I am afraid that I do not know.

David Rogers: My understanding is that the provision is intended to cover such places as holiday parks, with suites of chalets. It is not about somebody's second home, which they might rent out. It is about places that are given planning permission specifically as holiday resorts.

Jim Tolson (Dunfermline West) (LD): I generally welcome the proposals. This is a big if, but if they bed in well and work out well, the new system will be a great bonus to sellers and buyers.

However, I wish to raise a couple of points of concern with you, minister, to see whether you can give some assurances to the public. First, some members of the public are quite concerned that, given the fact that a single survey is commissioned by the seller, it might be somewhat biased and its validity affected. Of course, professional organisations do surveys, and I hope that their professionalism would come through, but what assurances can you give the public that the survey will hold water in relation to the properties that they seek to purchase?

My second point relates to new-build properties, of which there are a significant number in my constituency and in the constituencies of other members. Being a popular place, Dunfermline is attracting many purchases well before the properties are built—sometimes, properties are purchased when they are just a plan on a piece of paper. What assurances can you give buyers of new-build properties? I am a bit concerned that you are not giving them a chance to take part in the system and give validity to the Government's good proposals.

Stewart Maxwell: You are quite right that new-build properties will be excepted. As you have stated, many properties are bought off-plan or before they are completed. A substantial survey cannot be completed on a property that does not exist. In practical terms, it seems perfectly sensible to except new-build properties. However, they will be excepted only for that first sale—all future sales will be covered by the regulations.

Your point about trust and the validity of surveys is quite right. Having met representatives of the Royal Institution of Chartered Surveyors and discussed the matter in some detail, I am confident that the surveying profession will provide objective reports that are based on survey results; there is no question of surveyors being put under pressure to do certain things. A surveyor might feel under pressure today, but that is no different from what could happen after the regulations come in, so I do not think that that is a valid criticism. I am confident that surveyors will provide detailed and objective information. It is in their best interests to do so, and people have the right to challenge information if it is subsequently proved to be incorrect in some way. It is in the best interests of surveyors to carry out their work professionally, and I have no doubt that they will do so.

People will not just get a valuation, as happens now. Effectively, a valuation is a fairly subjective judgment on a property. In future, people will get a detailed survey that will provide the seller and prospective buyers with a lot of information. The survey will be a much more objective analysis of the property. On the issue of trust, we can rely on the professionalism of the RICS and the industry. The information that will be provided will be much more objective than a subjective valuation.

The Convener: There are no more technical questions, so we move to the debate, which may last no more than 90 minutes. I invite the minister to speak to and move motion S3M-1117, in the name of Nicola Sturgeon.

Stewart Maxwell: I have already made all the comments that I wish to make on the draft regulations. We have covered most of the points that I would otherwise have raised at this stage.

I move,

That the Local Government and Communities Committee recommends that the draft Housing (Scotland) Act 2006 (Prescribed Documents) Regulations be approved.

The Convener: I invite questions from committee members.

Kenneth Gibson (Cunninghame North) (SNP): There are a number of excepted categories. What provisions are there to ensure that some sellers do not try to have the properties that they are selling categorised under those excepted categories to avoid having to produce a survey?

Stewart Maxwell: The fact is that trading standards rules and laws govern the marketing and selling of goods, including property, and

ensure that a person cannot attempt to provide an inaccurate description of a property or to sell it as something that it is not.

Moreover, such actions are not in sellers' interests. If the new system is in place, buyers will expect to have full information, including an energy report, a property questionnaire and a full and detailed property survey. For example, I might view something that was clearly a residential property but was being marketed as something else. If I asked for the survey and the other reports, only to be told that they were not available, I would be put off purchasing that house. It will be in sellers' best interests to provide that information because that will be the normal process for selling houses.

The Convener: I might have misled members, but I should point out that this is the debate, in which they should speak for or against the motion, not the question-and-answer session.

Kenneth Gibson: Sure. I will just ask questions, and then decide whether I support the motion—he said, with his nose growing steadily.

The Convener: I can offer only guidance, but you will not get to ask a series of questions.

Kenneth Gibson: The required documents must be prepared within 12 weeks of the property going on sale, but the property can also be taken off the market for a period of 28 days and then put back on. However, some mortgage providers will not grant a mortgage if the survey is not carried out within three months. Why have you not set a limit for the maximum length of time for which a survey is valid? After all, if a property continued to be taken off and put back on the market, those three months could stretch out, and if someone tried to get a mortgage on it, they would still have to get a survey because the lender might not think that the previous survey was up to date enough.

Stewart Maxwell: Perhaps I might intervene at this point.

There was much debate about whether the information should have a shelf life. I point out that, even with properties that are on the market for a long time, the information provided will include not only the valuation but other valid documents such as the single survey, the property questionnaire and the energy report. Although in your example another valuation might well be required—which is, of course, entirely a matter for mortgage lenders and the individuals involved in the process—that will form only a small part of the overall package of information that people will get. Even in those circumstances, people will still get more and much better information to allow them to make a better decision about whether they should go ahead with the purchase.

Moreover, if we put a shelf life on the reports, people might inadvertently—and unnecessarily—have to carry them out more than once. Such detailed information does not go out of date so quickly—indeed, it lasts for a long time. Although there is a question about valuation, it is, as I have said, only a small part of the process.

10:30

David McLetchie: I oppose the approval of these regulations. In fact, I am very disappointed to find that the new Scottish National Party minority Government has picked up this particular regulatory baton from its Labour and Liberal Democrat predecessors, despite all the evidence that emerged in the previous parliamentary session that home information packs and single seller surveys were a complete and utter waste of money and sought to address a problem that the marketplace had already solved. It appears that in its craving for more regulation and interference the new Government is no better than its predecessor. Indeed, this move marks a significant U-turn from the commitment made in the SNP manifesto by the supposedly pro-enterprise Mr Mather and others.

Members will recall that the Communities Committee took evidence during session 2 on single seller surveys. The infamous pilot surveys were undertaken in 2005. There were supposed to be 1,200 pilot surveys to assess the value of the scheme, but there ended up being only 74 surveys in the pilot areas. In the overheated housing market of Edinburgh in 2005, there was only one survey, which, ironically—although, some would say, not surprisingly—led to the seller not selling the house. Those are the facts. On that basis, one would expect any government to accept the fact that sellers would not voluntarily recognise the value of single seller surveys in marketing their homes. Sadly, both the previous Administration and the current one seem to think that they know better than the marketplace when it comes to sellers. People who would not voluntarily commission single seller surveys to assist in the marketing of their homes are now being compelled to do so.

I point out some of the observations that were made by people who are involved in the property market in relation to the survey, following the fiasco of the pilot surveys. The Glasgow Solicitors Property Centre said that buyers did not trust the single survey and arranged their own additional surveys. It said that the single seller survey would slow down the housing market, as the survey needs to be prepared before the property can go on the market. It also said that the single survey system will reduce the volume of properties on the market, as speculative sellers will disappear due

to the additional costs—a point that I made earlier in questioning the minister. The GSPC reported that

"the incidence of multiple surveys … affected roughly a third of buyers even when the market was at its busiest and is much less prevalent today"—

a trend that people who are involved in the market say has been continued and accentuated. Further evidence was given by the Scottish Consumer Council, which highlighted the fact that the single seller survey will

"cause difficulties for disadvantaged buyers and sellers, who may be on low incomes and/or be buying or selling low-value properties in areas of low demand."

So, the buyers and sellers in Scotland's property market are the losers. Who are the winners? We have only to turn to the Executive note on the regulations, which was helpfully prepared by the minister, to see who the winners are. The number 1 winners are the surveyors. We are told, in paragraph 18 of the Executive note to the regulations:

"Recent research estimates that the annual spend on surveying fees will rise from between £25m and £40m to between £57.6m and £83.2m."

That is an increase of more than 100 per cent in the fees payable to the surveying profession as a result of the introduction of the regulations. It must be the biggest gravy train for surveyors since they first started staking out the great plains of America. It is remarkable that a scheme that is promoted as ending the cost of people getting so-called multiple surveys done ends up benefiting the surveying profession to such an extraordinary extent—members should remember that that is the net cost.

People will not have to get multiple surveys done, which, you would assume, would reduce the income to the surveying profession; however, the Government's report tells us that that is not the case. Although the Government is getting rid of the need for multiple surveys—a move that I question, as buyers do not trust the single survey—remarkably, the total cost of surveyors' fees is more than doubling according to the Government's own estimate. On the issue of the total costs of preparing the single survey property questionnaire, et cetera—the home pack, as the minister described it—paragraph 19 of the Executive note states:

"It is expected that solicitors and estate agents will be able to pass most, if not all, of any additional costs back to the parties involved in the sale of the house."

In effect, the sellers and the buyers will pick up the bill yet again.

The policy has been flawed ever since the ill-fated pilots were run in 2005. It is unwanted and unnecessary. The marketplace has already resolved many of the issues that gave cause for concern. The incidence of multiple surveys has dropped dramatically and the number of properties for which bids are submitted subject to survey has increased dramatically. Anyone who is involved in the property market knows that.

The number of properties that are sold on a fixed price basis has also increased significantly. That used to be the preserve of new homes, but has gradually extended into the second-hand market and I foresee it extending much further as the property market slows, flatlines or—as I hope it does not, but as many think it will—falls in value in the next year, when selling times will become longer and prices will lapse as a result.

At this time of difficulty for home owners, with a slowing market and falling capital values, it is disgraceful that the Government should try to put a regulatory and cost burden on buyers and sellers of properties. I recommend that the committee does not recommend approval of the regulations.

The Convener: How to proceed is up to you, minister. You will have an opportunity to respond and sum up at the end.

Stewart Maxwell: Perhaps it would help if I dealt with some of the issues now. Are you okay with that?

The Convener: I am.

Stewart Maxwell: I will deal with some of the issues that Mr McLetchie raised. He spent time on the pilot. The pilot proved that a voluntary scheme would not work. When we think about it, the reason for that is obvious. When the market has one system in place for buying and selling houses, it is difficult for individuals to adopt a different system within that market. It was clear that that would create difficulties and would not be welcome, particularly among sellers, because they had to purchase a survey to provide to prospective buyers and buy a survey for any house that they bought, so they were hit twice. That is why the voluntary scheme, in the current marketplace, had the result that it did, although that in itself has no impact on the policy intention behind the single survey. It is clear that a voluntary scheme would not work, which is why it is important to move to a mandatory scheme.

The overall cost of surveyors' fees will rise, not for the reason that Mr McLetchie gave, but because 90 per cent of buyers currently choose a valuation survey, which is the cheapest survey, whereas in future they will receive a detailed survey. That will be roughly equivalent to a scheme 2 survey, which is much more expensive than a valuation survey. In return for that increased cost, buyers will receive detailed information—which nine out of 10 buyers do not have at the moment—with which to make the biggest financial decision of their lives.

The question of who the winners are was asked. The winners are the buyers, who will receive detailed information about their purchase. Particular winners will be first-time buyers. We hear week in, week out about first-time buyers who are struggling to get on to the property ladder. First-time buyers will no longer have to spend anything on surveys, which will be entirely free to them, as they will not be selling a property.

As for the policy's popularity or otherwise—I think that Mr McLetchie said that it was much unwanted—in a recent survey, the Edinburgh Solicitors Property Centre found that two thirds of buyers want a single survey. Another point is that 80 per cent of sellers are also buyers, so almost nine out of 10 people in the marketplace will benefit from the new scheme.

It is clear that offers subject to survey do not operate throughout the country. They also increase the time and uncertainty of the process, because such offers mean that people near the end of the buying process before they get a survey done. They are then under a great deal of pressure for the survey to match the price that they have offered for the property. It is difficult for them to pull out at that stage. However, if the survey does not match the price that they have offered, they may have to pull out of the purchase, which causes a great deal of difficulty not only for the buyer, but the seller. Sale subject to survey creates uncertainty in the marketplace. The single survey is very much a step forward.

Mr McLetchie quoted a number of people. I, too, have quotes. Julia Clark from Which? said:

"This will be the biggest improvement for house buyers and sellers for a generation … It will give Scotland a system far ahead of that in England."

Mr McLetchie also quoted the Scottish Consumer Council, which said:

"We welcome the single survey, which we believe is in the consumer interest … We are convinced that in a few years time, the new system will seem unremarkable, and we will wonder why it took us so long to finally adopt a more common sense approach."

I have several pages of quotes but, in the interests of moving on, I will not go into them at this moment.

The Convener: Thank you for that consideration, minister.

Stewart Maxwell: The single survey has been widely welcomed by a number of individuals and groups across the sector. In particular, the energy report has been welcomed by environment groups such as Friends of the Earth Scotland.

Johann Lamont: As others have said, the debate is not a new one. Mr McLetchie's position was articulated during the passage of the bill. I think that the Conservative party was the only one to take that position, although some members of other parties may also have done so. However, the general position at the time was one of support for the previous Administration's approach. The minister is right in saying that the measure should be mandatory; we have seen that a voluntary system does not work.

One of the motivations behind the survey is the recognition of the odd way in which the housing market operates. People give less consideration to buying a house than they do to buying a coat. They may have a valuation survey done, but they know nothing about the property that they are buying. Sellers, too, are encouraged to sell without being honest about what they are selling.

In drafting the legislation, the former Administration wanted to achieve balance in the housing system. We wanted people to make wiser and more thoughtful decisions about what they were taking on in buying a property. Certainly, one important issue for us was property maintenance: people should take responsibility for the maintenance of their property. We thought that it would be difficult to develop that culture in circumstances where people take no thought whatever for what they are buying or selling.

At the time, people argued that the market had found its own solution in the form of a sale subject to survey. My direct experience—I have also heard about it anecdotally—was that buying, or selling, subject to survey caused its own complications. A seller can take their property off the market as sold subject to survey, only to find that the purchaser cannot conclude. They then have to start the process all over again.

I remind everyone of the real concern at the time that buyers, particularly first-time buyers, could—and to no real purpose—get caught up in the multiple-survey trap. One consequence was that that encouraged people to go for cheaper, poorer-quality surveys. Also, in setting low offers-over asking prices, the market was encouraging people to engage in buying properties that were outwith their limit.

No matter how perfect a market may seem to some folk, it was entirely reasonable to try to make trading in the market more responsible and fair. The regulations create not only responsible purchasers, but responsible sellers. Over the past number of years, there has been a huge increase in home ownership. We are at the stage when we need to see more responsible selling and purchasing in the housing sector.

Mr McLetchie presented an apocalyptic view of things. My final question for the minister is this: if you receive an indication that the measure is having a distorting effect on the market, or that

unexpected things are happening, what will you do? What has the Government put in place to monitor the regulations?

Stewart Maxwell: We intend to commission a number of studies to assess the impact of the home report. During 2008, a baseline study will be done to identify the issues and the extent of the problems that buyers and sellers face in the Scottish property market. That will be followed by a technical evaluation, which will be commissioned 18 months after the introduction of the home report to determine whether the regulations require to be amended. Finally, a full evaluation of the home report will be commissioned five years after its introduction to assess the progress of the policy against its objectives. Those measures will ensure that we keep a close watch on the situation in advance of the report's introduction, shortly after it, and in the long term.

10:45

Bob Doris (Glasgow) (SNP): I find myself in the odd situation of agreeing with almost every word that Johann Lamont said.

Sometimes it is best to talk from direct experience. Several years ago, I was the first-time buyer of a small, one-bedroom tenemental flat that had been converted. The storage cupboard had become a kitchen, and a bit had been shaved off the bedroom to make a bathroom. When I bought that flat, due to financial considerations I commissioned only a valuation survey. It was not the first property that I had gone for and I had paid for other valuation surveys. I am now in the process of selling that flat, and I seem to have been lucky in that there are no major structural defects. I was buying a pig in a poke and fortunately I seem to have got away with it.

There are lots of tenemental properties throughout Glasgow where people find themselves in a similar situation. First-time buyers need a level of protection so that they know what they are buying. Many cannot afford to get a more detailed physical survey because they are saving every penny for a deposit. Something that we are looking at on a cross-party basis is how to get first-time buyers on to the property market—not just for the sake of it, but in a safe and secure way.

A number of my constituents have not been as lucky as I have, and the local authority has had to move in and—rightly—enforce compulsory repairs for safety reasons. However, because they got a basic valuation survey, those first-time buyers have no right of recompense and now have to pay tens of thousands of pounds to make their property safe. It is right that properties are made safe—and the local authority has played its part under the health and safety legislation—but my constituents have had no protection when they have found themselves in that situation. They may now find themselves off the property ladder and in serious debt. I hope that the regulations will deal with those situations.

I know that Patricia Ferguson is having a detailed look at how we provide protection for property buyers; not just owner occupiers, but those involved in the private rental market. She is also looking at how private rental properties are factored. We must consider everything that is happening in the property sector and any new measures should complement other developments.

I have two more points. First, as I said earlier, I will be looking to sell my flat. That will make me face up to my responsibilities regarding the physical condition of my property. That is a question of not just the state of its repair—I have a responsibility to maintain my housing stock—but energy efficiency. We are all looking to meet the stringent environmental targets that the Parliament is hoping to set.

My second and final point is on those excepted from the regulations—those who will not have to provide the single survey. The regulations refer to someone who has a suite of commercial properties. If a business person had perhaps 15 or 20 houses in multiple occupation in one area of a city and was hoping to sell two or three tenemental closes on the commercial market, would they have to provide seller surveys?

Stewart Maxwell: If the properties were being sold as a commercial transaction, they would not be covered. The regulations cover residential properties. Commercial transactions in which a business took over another business that happened to include a number of properties would not be covered, although there would still be a requirement for an energy performance certificate, which will be introduced irrespective of the home report. Commercial transactions would be affected by building standards and other legislation, but they are not covered in these regulations.

Members have mentioned the subject-to-survey system. I perhaps should have said earlier that we do not have subject to survey; we have subject to valuation, which is different. Bob Doris said that he got only a valuation survey. I, too, have done that—because a valuation survey was the cheapest option at an expensive time—and then discovered that I had a swimming pool under my floorboards and various other problems once I moved into the property.

The most important points that Bob Doris makes are those about the physical condition and maintenance of properties—Johann Lamont touched on that, too—and about the energy report

and energy efficiency. Those are two important points that we have not discussed much so far. One result of the measures will be that, because people will know that a detailed survey will be done, they will be encouraged and motivated to maintain their property to a higher standard. The standard of properties in the private sector is a big problem—we have billions of pounds-worth of disrepair in the private sector, which we must try to address. The measures will help to motivate people to keep their properties maintained properly.

Bob Doris mentioned alterations to properties. The property questionnaire contains questions on that very issue. Questions 6a and 6b are detailed questions that will require sellers to detail changes that they have made.

Patricia Ferguson (Glasgow Maryhill) (Lab): I have a couple of questions for the minister. I am interested in the minister's response to Bob Doris's question about commercial transactions. I want to pursue that issue a little to be absolutely clear about it. If someone were to buy an entire tenemental property and refurbish it, would the individual properties be subject to the regulations when they came on to the market? If someone bought a large tenemental property and subdivided it to make it into an HMO and then, when they put it on the market, did not specify whether it was being sold as an HMO but left the option open for it to be sold as a single property, would that be covered by the regulations?

Stewart Maxwell: The answer is yes in both cases. If somebody buys a property to refurbish and sell it, they will be marketing a residential property, so they will be caught by the regulations and the Housing (Scotland) Act 2006. In the second case, in which somebody sells a property for residential, HMO or other purposes, if it can be sold as residential and that is the way in which it is marketed, the seller will be caught by the provisions. An exception occurs when the property is marketed as being for a business and as a commercial transaction. The only other exception is dual or mixed use, in which a property that people stay in is part of another property—for example, a shop with a flat above it.

Patricia Ferguson: How will you oversee or police the situation? When properties that are HMOs are put on the market, it is often indicated that they are currently used as an HMO or for let, but that they could be reconfigured back into a single dwelling.

On a further issue, how will someone who has commissioned a report, or a buyer, query the survey or other documents that go with it if they think that certain matters are not described appropriately in them?

Stewart Maxwell: On your first question, the properties that you mention are residential, so in all those circumstances, the seller will be caught by the regulations. Whether or not the property is an HMO, the seller will be caught, because the property is marketed as residential. It will not matter whether the property can be returned to a single property—the seller will be caught in both cases.

Sorry, what was your second question?

Patricia Ferguson: It was about what happens if the person who commissions the report or the person who is interested in buying the property finds that the survey does not tally with their view or understanding of the property.

Stewart Maxwell: I should have mentioned that if there is a dispute or a question about a property that is being marketed, a person can report the matter to the trading standards service.

The information that a seller provides must be provided to all potential buyers. A seller can correct factual errors in the survey, which is important, and buyers have a right of redress if mistakes are subsequently found. Sellers will be able to question factual elements in the survey, but they cannot enter into debate about matters such as the valuation. The information would have to be provided to everyone who was in receipt of the survey.

Patricia Ferguson: If Mr Doris, who is looking for a new house, goes to see a property that is advertised as having two bedrooms, and finds that it has one bedroom and a cupboard that contains a sofa that can be turned into a bed, with whom should he query the matter?

Stewart Maxwell: I am reliably informed that the Property Misdescriptions Act 1991 covers such eventualities.

Alasdair Allan (Western Isles) (SNP): I welcome the measures. How much consideration has been given to capacity in the surveying profession? You said that the new kind of survey will become the norm rather than the exception.

To what extent are the buying public educated and geared up to cope with the new system?

Stewart Maxwell: There is no evidence of a capacity problem in the surveying sector. People currently commission surveys and will do so in future, so there will be no huge difference in activity, other than that the new surveys will be more detailed. I do not expect a great difference in the overall number of surveyors that will be required.

Perhaps your question relates to capacity in certain parts of the country. We cannot regulate for that, but I expect that the market will determine

how many surveyors cover an area, as it currently does. If there is demand for surveyors to be available in a certain area, I am sure that surveying companies will be more than happy to meet demand and take the business that is available.

You asked how we would make information more widely available. If the committee agrees to recommend that the regulations be approved, a website will immediately be made available to the public and the sector, which will give details about much of the information that people require and include frequently asked questions. Lots of information will be available for the sector and the general public.

There will also be an information campaign to provide everyone who is involved in the process with detailed information about the change, which will come into effect on 1 December. The campaign will be targeted. There are obvious places where the information should be provided, such as property centres, estate agents' offices and the many supplements on house buying and selling in the press. We will also roll out training through the representative bodies of surveyors and estate agents, to ensure that people are fully trained before the change takes place.

11:00

The Convener: Members who wanted to take part in the debate have done so. Minister, you responded to points as we went along, so I presume that you do not want to wind up the debate.

The question is, that motion S3M-1117, in the name of Nicola Sturgeon, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Alasdair Allan (Western Isles) (SNP)
Bob Doris (Glasgow) (SNP)
Patricia Ferguson (Glasgow Maryhill) (Lab)
Kenneth Gibson (Cunninghame North) (SNP)
Johann Lamont (Glasgow Pollok) (Lab)
Duncan McNeil (Greenock and Inverclyde) (Lab)
Jim Tolson (Dunfermline West) (LD)

AGAINST

David McLetchie (Edinburgh Pentlands) (Con)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Motion agreed to.

That the Local Government and Communities Committee recommends that the draft Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008 be approved.

The Convener: I thank the minister and his officials for giving their time.

Housing (Scotland) Act 2006 (Penalty Charge) Regulations 2007 (SSI 2007/575)

The Convener: We consider an instrument that is subject to the negative procedure, which deals with a matter related to the previous instrument. No member has raised points on the instrument and no motion to annul has been lodged. I take it that the committee has no report to make on the instrument.

Members *indicated agreement*.

11:01

Meeting suspended.

11:04

On resuming—

Planning Application Processes (Menie Estate)

The Convener: We move now to item 4 on our agenda. The committee will take evidence from the Royal Town Planning Institute in Scotland. Our witnesses are Roger Kelly, who is the convener of the institute, and Alistair Stark, who is the immediate past convener. I welcome them to the committee.

The committee has received correspondence from Trump International Golf Links Scotland to confirm that witnesses will be available for an evidence session with the committee next week, on 6 February.

David McLetchie: I welcome the fact that representatives of the Trump Organization have agreed to meet the committee. We look forward to their answers to members' questions.

I also point out for the record that this committee will not determine the Menie estate application. Now that the application has been called in, determination is a matter for the relevant minister. He will decide both the process and the timetable for determination of the application. Therefore, the somewhat ill-informed suggestion that the committee's inquiry is in some way delaying the process is completely and utterly wrong and betrays a total misunderstanding of the operation of the planning system. Any complaints about delays in disposing of the Menie estate application should be directed to the relevant Scottish Government minister and not to members of this committee.

The Convener: We concur with Mr McLetchie's remarks, which are welcome, as is the attendance of the Trump Organization next week.

We move now to Mr Kelly and Mr Stark. Do you wish to make an opening statement?

Roger Kelly (Royal Town Planning Institute in Scotland): I am the convener of the Royal Town Planning Institute in Scotland for the present year, and my colleague Alistair Stark was convener last year. Our director, Veronica Burbridge, hoped to be here this morning but is unable to attend, so we are here to answer your questions and will do so from our perspective as a professional body.

We are a registered charity whose purpose is to advance the science and art of town planning for the benefit of the public. We represent the planning profession, which is about 2,000 strong in Scotland. The larger profession in the United Kingdom and overseas is about 20,000 strong. As a professional body we take a policy-neutral stance, but we will answer the questions that we can.

The Convener: Have recent events raised any concerns for you as town planners? What is your view of recent events such as the one involving Trump or the one at Aviemore?

Roger Kelly: Concerns have been raised as a result of public discussion of the issues. We have stated our concern that clear guidance and clear procedures should be available for all to see. The recent reform of the planning system in Scotland has yet to work itself through, but there will have to be a clear system for decision making that is known about and clearly understood. Our concern is for the longer term: we have to get things right and ensure that we have an accountable and transparent system.

The Convener: Your submission to the Public Petitions Committee has been sent to us. Do you have any specific concerns about the role of politicians in live planning applications?

Roger Kelly: The planning service and planning decisions are often political. That will always be true, and it is right that planning decisions should be part of the political life of communities up and down Scotland. It is not surprising that planning decisions can be political. The important thing is to ensure that the system is transparent and accountable, so that people can see how decisions are made and can learn lessons from those decisions that will throw light on future decisions. We must learn and we must ensure that the rules are clear and understood by all concerned.

There will always be new cases that raise new issues or reveal new sources of uncertainty, and we can learn from such cases. As we move towards a reformed planning system—which we hope will be a basis for trust and for quick decisions that are clearly understood by all—we can perhaps learn lessons from this case and from other recent cases to ensure that there is clear guidance. That is the marker that we are putting down for everyone.

The Convener: Do you see a departure from past practice? So far, the First Minister, Nicola Sturgeon, Bruce Crawford and Richard Lochhead, who are all Cabinet members, and Fergus Ewing and Mike Russell, who are ministers, have all been drawn into commenting on live planning applications. A new culture in the new Government of involvement in the planning process is a worry.

Roger Kelly: As I said, involvement is a given, in the sense that people and their political representatives are bound to be concerned about things that happen in their communities throughout Scotland—that is not surprising. All that we should

be sure of is that we have a clear and accountable system for dealing with that. In Scotland, we have done very well in the past, but perhaps we have not been quite as clear as we could have been in laying down the ground rules. Such rules should be simple and straightforward: guidance with a light touch. We do not need to tie everything up with regulation, particularly as, working in planning, we have to be open to ideas and to new proposals. That is what our system aims to do.

The Convener: Should there be a review of the guidelines or of the ministerial code that covers the involvement of ministers?

Roger Kelly: It is an excellent moment for that to take place because we are reforming the planning system.

Alasdair Allan: You mention—or rather Dr Burbridge, the national director of the institute, mentions—in a letter to Mr Swinney on 12 December that the institute does not comment on individual planning cases. Will you confirm that that is the case?

Roger Kelly: Yes.

Alasdair Allan: So, talking about golf courses in Aberdeenshire is not part of your remit here today.

Roger Kelly: Certainly not.

Alasdair Allan: The letter goes on to talk about issues of principle but, as far as I can see, it clearly refers to the Menie estate. Are you clear about the remit of the letter, and are you in full agreement with it?

Roger Kelly: Indeed. I was present at the executive committee of the RTPI in Scotland the day before the letter was sent, as was my colleague, Alistair Stark.

Alasdair Allan: The letter talks about

"particular concerns raised by RTPI members."

Was that a body of your membership or members of your executive committee? What number of members are we talking about?

Roger Kelly: We are talking about issues that were raised by members. Many points about planning were being raised in the media and by the public and, naturally enough, many questions were put to our institute in Scotland. The letter was sent to reflect that level of interest and concern, and to set out the institute's position. That is part of our mode of working—communication is important.

Alasdair Allan: Just to clarify, when you talk about concerns that were raised by RTPI members, which members—without naming them—are we talking about? Did the membership get in touch with you?

Roger Kelly: We are talking about a number of members being in touch with us, yes.

David McLetchie: Good morning, Mr Kelly and Mr Stark. How common is it that when your members who work as local government planning officers recommend acceptance of a planning proposal to the relevant planning committee, that committee takes a contrary view and refuses the application?

Alistair Stark (Royal Town Planning Institute in Scotland): It is not unusual—I cannot put a number on it for you, as those are not data that I would expect a professional planner to collect. I would expect the members of any committee that is charged with taking a planning decision to listen carefully to the advice that they are given by officers and then reach their own decision. However, it is not unusual for a recommendation not to be accepted, although it happens in only a minority of cases. That is the nature of democracy, and I would not have it any other way.

11:15

David McLetchie: Let us say that a planning official recommended acceptance of an application but the planning committee rejected it, for a reason. If the applicant appealed to the Scottish ministers against that decision, would your members, as professionals, have difficulty preparing an appropriate position paper or submission for the appeal process, in connection with the Scottish ministers' consideration of the application?

Alistair Stark: None of our members should put forward as their own an opinion that they do not hold as professionals. That is where the line would be drawn. However, it is open to one of our members, speaking as a professional, to explain the position of the council that took the decision. If a member feels so compromised that they are unable to support a decision by their authority, they must withdraw from giving evidence at the inquiry. If they offered as their own an opinion that was not their professional judgment, they would be in breach of the code of professional conduct.

David McLetchie: However, your members are entitled to assist in the preparation of a submission that sets out the authority's opinion, as long as they do not represent that opinion as their own.

Alistair Stark: That is correct.

David McLetchie: Is it not their professional responsibility as employees of the authority to submit and state the authority's position, regardless of whether they agree with it?

Alistair Stark: That is correct.

David McLetchie: In the case of the application that we are discussing, how would the professional integrity of those of your members who work for Aberdeenshire Council be compromised if, as professionals, they simply represented to an inquiry or in a submission to ministers the council's position?

Alistair Stark: Again, this is a matter of fact and degree. Many complex issues are embedded in the Trump application, as is the case with most complex applications. Our members may have no difficulty presenting an opinion on the vast majority of issues. However, an application may include some elements on which the professional opinion must be different from the employer's opinion. That issue must simply be faced at the time.

David McLetchie: However, the duty of the professional, as an employee, is to represent the authority's view. If an authority turns down an application, for a number of reasons, is it not the professional responsibility of that authority's employee to prepare the appropriate papers and submissions that set out the formal reasons for the refusal?

Alistair Stark: That is correct. We must remember that members of other professions, as well as professional planners, may be involved. Legal support staff have a slightly different code of conduct in relation to these matters.

David McLetchie: In the situation that I have outlined, the professional integrity of your members could not be compromised if they simply represented professionally the authority's views and its reasons for rejecting the application.

Alistair Stark: There might be some angst surrounding the issue, which would have to be thought through carefully and responsibly, but there are means of addressing any difficulty that might arise. We would hope to find a resolution in due course.

David McLetchie: It is understood that the Trump development proposal contravened at least nine local plan and three structure plan policies—you might accept that as a fact for the purposes of my question. Notwithstanding the recommendation that planning officials made to Aberdeenshire Council's infrastructure services committee, those contraventions obviously weighed heavily with it, and it thought that they justified refusing the application, albeit on a casting vote. If a committee cites the contravention of at least nine local plan policies and three structure plan policies as the reason for taking a decision, would there be any difficulty in members of the Royal Town Planning Institute in Scotland as planning professionals making a submission in an appeal process to the Scottish ministers that says that they favoured rejection of the application because it contravened those policies?

Alistair Stark: I do not wish to comment on the application per se.

David McLetchie: No, but I am giving a scenario.

Alistair Stark: I see no great difficulty in principle in members of the institute doing as you suggest in that scenario, but individual issues and the views of individual officers have to be—and would be—carefully considered.

David McLetchie: I want to move on to appeals that have been upheld and the awarding of expenses to appellants. If an authority can justify a decision that it has taken by referring to a proposal's contravention of nine local plan and three structure plan policies, in your professional experience, how likely do you think it would be that an award of expenses would be made against that authority?

Alistair Stark: We should start by considering section 25 of the Town and Country Planning (Scotland) Act 1997, which obliges an authority to consider the provisions of the development plan, which you have mentioned, and any other material considerations. Development plans are not blessed with prescience. Development will always come up that was not anticipated when the development plan was prepared, and in such instances—I understand that this happened in the case to which you are referring—the development plan is not a perfect guide. Other material considerations must be taken into account. Sometimes a difficult balancing act must be performed. We are talking about such a balancing act in this case.

David McLetchie: I accept that a balancing act is involved, but it is not unreasonable to refuse an application because it contravenes nine local plan and three structure plan policies, although there may be things in its favour. If it is reasonable to reach such a view on balance, surely it cannot be reasonable for the Scottish ministers, once they have considered an appeal, to award expenses against an authority that has made such a reasonable judgment. Is that fair comment?

Alistair Stark: Reasonableness can be judged only in individual instances. What may be reasonable in one set of circumstances may be unreasonable in another set of circumstances. The principal issue that anyone who considers a claim for expenses would look at would be whether procedure had been properly followed. If it had not been, that would be deemed to have been unreasonable, and a claim for expenses would be open.

David McLetchie: There is no question about the processes in this case.

Alistair Stark: Well, that is the first instance that would be considered. The second one is whether any reasonable authority could have reached the same decision. If the answer to that question is yes, there is no claim for expenses.

David McLetchie: Would it be reasonable for an authority to reject an application that contravened its local plan in nine instances and its structure plan in three?

Alistair Stark: It would not be if it had not considered other material considerations.

David McLetchie: Yes, but those are things that could be weighed on both sides of the reasonableness balance.

Alistair Stark: Yes, the application would have to be examined in that light.

Jim Tolson: Gentlemen, thank you for agreeing to come along this morning so promptly. It helps the committee in its consideration of the issue.

A press report from Sunday 16 December states that Dr Veronica Burbridge made a comment on behalf of the institute. She wrote a letter to John Swinney reminding ministers of the need to be "politically impartial" and "transparent". Further on in that letter, she says:

"the handling of this case has raised a number of matters of principle. Members of the Institute have expressed concerns that the manner in which this case is handled should not appear to damage the integrity of the planning system."

On the institute's behalf, will you clarify which matters of principle have been of great concern in the handling of the case?

Roger Kelly: The first point to make is that the case is unusual for a number of reasons, but that does not make it an irregular case. It is an unusual case, from which lessons can be learned, and—as with any unusual case—it is particularly important that it is handled in a way that is clear and transparent to all. Our members are concerned not that something should not be done or has not been done but that something should be clearly seen to be done. They are also concerned that the steps that are taken and the accountability should be clear and transparent to all, not only in this case but in other future cases that may raise unusual issues, so that people can understand how decisions are arrived at and how procedures work.

Jim Tolson: The submission that Dr Burbridge made to the committee on the institute's behalf says, quite rightly, that the Scottish ministers may intervene and gives a number of examples of when they may intervene, one of which is if the application is of national importance. Is it the institute's finding that the application is of national importance? If so, would it not have been reasonable to call it in even before it went to the Aberdeenshire Council planning committees?

Roger Kelly: There are a number of times and places at which call-ins can be made. The powers are there to be used and the institute's concern is that they be used clearly and transparently, that everyone be clear about the reasons for their use and that everyone be clear about the reasons for the decisions that are made. That concern is raised by an unusual case; it is our determination to learn lessons from the case and others at this critical time, when we are hoping to move to a system that delivers more rapidly and develops trust on all sides of the development industry.

Bob Doris: Good morning, gentlemen, and thank you for coming. I refer to the letter of 12 December that your national director, Veronica Burbridge, wrote to John Swinney. The start of that letter says:

"During the past week I have received several enquiries from the press and representations from members of the Institute in relation to the application for the golf course and related developments".

You said that you have 2,000 members. How many members made representations to you?

Alistair Stark: I am afraid that I do not know the answer to that. The inquiries went direct to our office in Melville Street in Edinburgh and would have been handled by Dr Burbridge and her staff. It was not an enormous proportion of our membership, but it is highly unusual for any of our members to feel such concern that they raise such an issue with our office. We are talking about a small number of instances.

Bob Doris: Do you mean five or six?

Alistair Stark: I really cannot tell you. I do not know.

11:30

Bob Doris: I apologise for cutting you off, but I asked that question because the executive committee decided to write to Mr Swinney because of those representations. Is either of you gentlemen on the executive committee? If the executive committee made that decision, then surely the national director would have said that you had four, five, six or seven representations—or however many representations were made.

Alistair Stark: I chaired the meeting of the executive committee, as I was convener at the time. We did not ask that specific question; we did not think that it was necessary to do so, I am afraid. We were concerned that any of our members should have felt it necessary to voice their concerns, which were for the future integrity of the entire planning system at a crucial time. Around the table were members of the institute

who are charged with the orderly running of the profession in Scotland, and they were concerned. I, too, was concerned, mainly because I was seeing newspaper headlines that tended to suggest that a planning decision had been taken against the wishes of the populace at large and so on. There were all sorts of scare stories. The crucial point is that those headlines were not taking a balanced view of all the planning issues.

Bob Doris: It is interesting that you should mention newspaper headlines. Some people would find it odd that, in the letter that you sent to the cabinet secretary, you specifically mentioned representations that were made to the executive committee, but when the executive committee discussed the issue, you had no idea of the number of representations, although it was obviously a tiny amount. You have gone on the record here today and said that one representation could have been enough to solicit such a decision.

You have also said that you might have been influenced by the media; the media and the perceptions of certain individuals in the media influenced you and prompted you to write the letter. Why did you think it necessary to make it an open letter? Does the RTPI frequently have meetings with senior planning officials and/or ministers? Was an open letter the most appropriate way to raise your concerns?

Alistair Stark: The letter was not written as an open letter per se. The committee's decision was to write to Mr Swinney and advise him that we had certain concerns based on the views that were voiced by our members and the executive committee, and on our reading of what was appearing in the newspapers. We also agreed that, should events take such a turn that further inquiries would be made, the letter could be relied on to form the basis of a further response.

Bob Doris: Would it not have been more appropriate for the RTPI to make official representations to ministers? You said that you were influenced by a tiny minority of your members—although you cannot tell us how many—and that you were directly influenced by perceptions that were placed in the media. Rather than write privately to a minister to raise your concerns, you decided to fuel media speculation by releasing such a letter to the media.

I do not know whether you wish to comment on that, but I have a follow-up question about the specifics of the letter.

The Convener: Last one, Bob.

Bob Doris: In the letter, Veronica Burbridge says,

"As you may know, the RTPI does not comment on individual applications",

and then, a few sentences later, goes on to say,

"Members of the Institute are concerned that the approach to scrutiny of this case should be politically impartial and according to planning law and planning policy."

You cannot have it both ways. Either the institute does not comment on specific cases, or it does, but it is in black and white, in the letter, that it does not.

I put it to you that the institute could have written,

"Members of the Institute are concerned that the approach to scrutiny of this case should be politically impartial and according to planning law and planning policy",

to any minister regarding any planning application. Surely members of the institute would be concerned that in any case

"the approach to scrutiny … should be politically impartial and according to planning law and planning policy."

That could not possibly be about the Menie estate, as Veronica Burbridge stated:

"the RTPI does not comment on individual applications".

There seems to be a tension within the letter about its meaning. What was it that you were commenting on?

Roger Kelly: I see no tension there. The institute was commenting on and seeking to put down a marker on the way in which things were handled—which should be transparent. That goes without saying, and it of course applies to all cases. The institute has made representations in that way when dealing with planning reform legislation, and it does so all the time.

The institute was merely putting down a timely reminder of its position. It felt the need to do so because, at the executive committee, concerns were being raised around the table. It was no part of the institute's role to fuel any speculation or to feed any media position on the matter in any way; it was merely to put a point to the minister concerned. That is part of our way of working, which is to increase communication at every possible opportunity. That is why we communicated with the minister and why that communication was made available. There was nothing that we said to the minister that was in any sense private. It was our position and it has always been our position.

Bob Doris: So you were making general points.

Roger Kelly: We were making general points. We were not making points about the Menie estate case. However, concern had been raised in the public's mind by that case.

The Convener: Bob Doris has raised a point about the letter to the cabinet secretary. You said that the Menie estate case prompted discussion at your executive committee, that an unusual number of your members expressed concern and that you

believed that you needed to write to the minister responsible about the future of the planning system. In your recollection of your membership of the Royal Town Planning Institute, has there ever been any other type of correspondence over the past eight years—in the history of the Parliament—in which your members have raised such serious concerns with a planning minister?

Roger Kelly: It is probably unfair to use the words "such serious concerns". Concerns were raised with the minister. Perhaps those kinds of concerns were not raised in the past merely because we had a different way of working in the system in Scotland in the past. Under the new arrangements, there is much closer contact between the institute in Scotland and Scottish ministers and between the profession and the Parliament. There is a closer individual link.

The Convener: It was after serious consideration, discussion and press reports about the Menie estate that you decided to send a letter to the planning minister, outlining the concerns. In your memory, has the institute ever had such a discussion and sent a formal letter to the planning minister outlining its concerns about the future of the planning process?

Roger Kelly: I would regard such a letter as unusual. I am not aware of previous such occasions, but there might have been many, for all I know.

The Convener: Mr Stark, do you remember the institute ever acting in a similar way?

Alistair Stark: I have been a member of the Scottish executive committee only since 2001. In my time, we have not commented in this way on an individual case. We have, on many occasions, commented on the operation of the planning system as a whole. We appeared several times before the Communities Committee in the previous session and gave evidence on many occasions, which is completely consistent with what we are now saying applies to an individual case.

The Convener: But it is very unusual that you would write to the planning minister about such circumstances.

Alistair Stark: It is, but it is not at all unusual for us to be concerned with the operation of the planning system as a whole.

The Convener: Absolutely, but you would expect the minister responsible for planning to take such a letter very seriously and, indeed, you would expect his officials to tell him that it was important and significant.

Roger Kelly: We would expect the minister to take our position for granted but to have in front of him a reminder of what our position is. That is what we were doing—making a timely reminder.

The Convener: You sent the letter on 12 December. Has the minister responded to your correspondence?

Roger Kelly: There has been no direct response.

The Convener: A yes or no will suffice.

Roger Kelly: No. That is it.

The Convener: There has been no response.

Roger Kelly: There has been no response.

The Convener: Thank you.

Roger Kelly: I should also say that we would not necessarily expect a response because we were putting down a marker.

The Convener: So you would not expect a letter from the RTPI to receive the courtesy of a response.

Roger Kelly: We might have expected a response, but in the circumstances we are not surprised that we have not received anything. As I have said, we were putting down a marker and making a note to the minister.

Johann Lamont: The RTPI certainly played an important role in my past working life during the passage of the Planning etc (Scotland) Bill. It had positive engagement not just with ministers but, more important, with members who were wrestling with the implications of that legislation.

Mr Kelly, you have said that you regard this case as unusual. What makes it unusual? I understand that you cannot talk about the case's merits, but I think that it raises interesting questions about the process. Has there ever been a case in which ministers have called in for their own consideration an application for a development that had not been notified between the decision on the application being made and the letter indicating that decision being written?

Roger Kelly: No, not to my recollection.

Johann Lamont: In your submission to the committee, you list the circumstances in which you would expect an application to be called in. As I understand from the list, an application would be called in on only one occasion other than when a local authority had decided in favour of it. Normally, a local authority would accept the application and ministers would decide to reconsider it because, for example, there were concerns about the development's implications or it was felt that the developer had not taken proper account of development plans. In all of those cases, there is call-in after an acceptance rather than a refusal. The only exception is when the proposal raises issues of national importance. Is it right that in the vast majority of cases, if not all,

applications are called in as a consequence of a local authority's decision to agree to, rather than refuse, a development?

Roger Kelly: That is the case in the vast majority.

Johann Lamont: A call-in is highly unusual, but a call-in after a refusal is even more unusual. According to my understanding of planning legislation, the proposal in Aberdeenshire might be big but it is not one of national significance. What would make a development of such national significance that it would be called in?

Roger Kelly: The powers exist, and they exist to be used, for the benefit of the planning system as a whole—nationally and locally. There may be rare cases when the powers are used in a way that is not precisely defined in advance. However, they still exist to be used. The important point from our institute's point of view is that their use should be justified and that the clarity of decisions should ultimately be there for all to see.

Johann Lamont: So the vast majority of call-ins happen when the Government is concerned about how a local authority agreed to a proposal, and the circumstances in which a project is of such national significance that it has to be called in are rare—so rare that we cannot yet envisage them. It would be hard to imagine that a golf course, no matter how grand, would be captured by those circumstances. It is certainly not part of the national planning framework.

I want to ask specifically about what I see as a redefinition of when a decision is taken. Is there anything that you can point to in planning guidance, planning advice or your own professional textbooks that makes the distinction between the decision and the decision letter being issued? As you have agreed, the vast majority of call-ins happen after applications have been accepted. The application in question has been refused at a local level, but the Government has said that an application is not really refused until the decision letter is sent. Is there anything that you can point to, anywhere, that tells us that that is the definition of a decision having been made, which would reinforce the position that has been taken by the Government?

11:45

Roger Kelly: The powers are there to be used and to be justified in any particular circumstance; it is up to those who make the decisions to justify them. Of course, a case such as this is unusual, as you have said, because things have not happened in this way before. However, that does not mean that they should not or could not have happened—they might have done.

Johann Lamont: But they never have.

Roger Kelly: Yes, but an unusual case is not necessarily an irregular case. The point is that the way in which matters are handled must be clear. My colleague may have something to add to that.

Alistair Stark: I was an employee of Grampian Regional Council in the days when regional councils had the power to call in planning applications that were before district councils. In one instance, concern was expressed that a committee of a district council had agreed to approve an application that was considered to be of regional significance. I was instrumental in the administrative process of calling in that application to the regional council between the time of the committee's decision and the decision letter being issued.

Johann Lamont: But that would be because, once the decision letter had been issued, nobody could do anything.

Alistair Stark: That is correct.

Johann Lamont: However, you are talking about an application that had been agreed to. We are talking about circumstances in which an application has been refused and the defence position for the developer is the right to appeal. Would you say, from your experience as a planning professional, that there is no example of the definition of when a decision is made being relied on in those circumstances? When does call-in happen? Is there anything anywhere that you can point us to that says that an authority should be mindful of the fact that, in the circumstances of a refusal, even if a committee has made a decision, the definition of a decision is when the letter has been issued?

Alistair Stark: I am not a planning lawyer and I do not claim to be one, but my understanding is that the decision does not exist in law until the letter effecting it has been issued.

Johann Lamont: Is that more to do with how we define the clock ticking in relation to an appeal?

Alistair Stark: It is.

Johann Lamont: I have a final question. You will agree that the issue with the planning legislation is about how you build partnerships with developers and local communities, which is a matter of trust—it is not about being dictated to by anybody in the planning process. However, there are concerns about one being elided into the other—that, if you refuse a development, it is because you are anti-development as opposed to not being particularly happy with that specific development. Can you think of any examples of developers being perceived to have caused damage to their reputation because they have exercised their first-party right of appeal? People

have expressed concern that a party with the first-party right of appeal may have more rights than others in the system. Have you ever heard it argued by those who have the first-party right of appeal—or by anybody in planning—that they would not exercise that right because, if they did so, it would somehow damage their reputation?

Alistair Stark: I have not personally come across that view except in the past month.

Roger Kelly: I have heard that suggestion made in the past, although I do not know how much credence to give it.

Johann Lamont: Do you have a figure for how many first parties appeal against local decisions without worrying about reputational damage?

Roger Kelly: The number is very small.

Johann Lamont: Thank you.

Kenneth Gibson: Hello, gentlemen. Your letter of 12 December says:

"Members of the Institute are concerned that the approach to scrutiny of this case should be politically impartial".

Are you of the view that the approach has not been politically—with either a small p or a large P—impartial?

Roger Kelly: I am of the view that it has not been. We have to wait and make sure that, when the decision comes, it is clearly justified. Scrutiny is useful at all times, which is why we are sitting here today.

Alistair Stark: I will amplify that a little. On 11 December, we were faced with a situation widely reported in the press and on the television in which a council had properly reached a decision by its own procedures at that time. That was immediately followed by statements made outside the planning process that appeared to contradict the properly made view of the council's planning committee. That was a political decision with a small p.

Kenneth Gibson: Do you feel that you were being pressured to produce a letter? If so, was that because you were being contacted by media outlets or was it simply because the members of your organisation were pressing you to make some kind of comment?

Alistair Stark: There was a raft of emotions in the committee that day. We were conscious that for about five or six years we had been trying to design an improved, more efficient and more inclusive planning system. We felt that, as a profession, we had been constructive and had a good relationship with the Scottish Government at all levels and that a certain degree of progress had been made in those directions. Then we saw in the press something that, at times, looked almost like mob rule by comparison. That was a concern. We felt that if it were to become the norm that planning decisions were overturned on—as I described it—small-p political grounds, that would undermine the public's confidence in the planning system as a whole.

Kenneth Gibson: Did you contact any planning officials in the Scottish Government to discuss the matter with them before you decided to send out the letter?

Alistair Stark: No, we did not. There was a minor contact with the chief planner, Mr Mackinnon, to the effect that the Scottish executive committee of the RTPI felt that it wanted to send a letter to the minister and left the door open to Mr Mackinnon to respond. Just to be absolutely clear, the response from Mr Mackinnon was that the RTPI in Scotland must do as it felt it ought to do.

Kenneth Gibson: Mr Mackinnon is a member of your organisation, is he not?

Alistair Stark: He is indeed.

Kenneth Gibson: Then it is almost an internal issue for the RTPI in Scotland.

Alistair Stark: Yes. I will make it absolutely clear why we felt that it was important and worth while to contact Mr Mackinnon in that way: we did not want Mr Mackinnon to be taken totally by surprise that we had written to the minister. A copy of the letter to Mr Swinney was sent to Mr Mackinnon for information.

Kenneth Gibson: You said that the letter was a take-note letter to remind the minister of your position. Why did you feel that you had to do that? Did you feel that what your role was had slipped his mind? Is it your view that the issue was mishandled?

Alistair Stark: We had first to clarify our own thinking. We had to clarify in our own minds exactly what the position of the institute should be in the circumstances that faced us that day and what our position might be in the mêlée that was apparently erupting around the planning system as a whole. The future was unpredictable.

We felt that a position statement would help us to do that. Having reached that conclusion, we then felt that it was useful to advise the minister of our position. After all, it was the position representing the collective view of the profession in Scotland—surely that must be of some use and relevance.

Kenneth Gibson: Indeed, it is certainly the collective view of the institute's executive committee. We talked earlier about the media. What media outlets tried to contact you for a comment from the RTPI?

Alistair Stark: I have not collated the series of inquiries. I personally was contacted on several occasions by the BBC—radio and television—and offered interviews to them. There were a number of newspaper inquiries, some to me and mostly from local Aberdeen newspapers, looking for background information on procedures rather than an opinion on the merits of the application. There were also a number of inquiries from the national press, some through our London office to our press officer, Andrew Kliman, and others to Dr Burbridge, of which you already know.

Kenneth Gibson: So you were in effect trying to defuse the situation—or would "clarify" be a better word?

Alistair Stark: Yes, clarify is a better word.

Kenneth Gibson: I have one other question. On 8 December, it was reported in the *Financial Times* that you

"emphasised the need for planners to stand firm."

What was that in reference to and, on reflection, do you think that it was appropriate to make that comment?

Alistair Stark: I do not recall that that was my personal comment. However, I think that planners have to stand firm for the integrity of the planning system as a whole. It is our professional duty to do so. As Mr Kelly explained, we are a charity responsible to the public for the sound operation of a good planning system in the United Kingdom and beyond. If professional standards are to mean anything, we must stand firmly behind them.

The Convener: You mentioned that Jim Mackinnon was a member of the RTPI. As a courtesy, and as he was a member and involved, he was given a copy of the letter that the RTPI sent the minister. Did he have sight of just the final copy? Were earlier draft copies discussed with him? What was the extent of the discussion with him before the final letter was sent to the minister?

Alistair Stark: I am not aware that Mr Mackinnon was shown a draft of the letter. The first time that Mr Mackinnon would have seen the content of the letter was when it arrived on his desk. If I may correct you, convener, it was sent to him in his capacity not as a member of the institute but as chief planner and therefore adviser to the minister.

The Convener: I may have misunderstood. I got the impression that there was some sensitivity around the executive committee sending that letter and the fact that Mr Mackinnon was also a member. Can you assure us that there was no discussion with Mr Mackinnon about the letter and that he saw no drafts of it before it arrived on his desk?

Roger Kelly: I am happy to give that assurance.

Alasdair Allan: Mr Stark, remarks were attributed to you in the *Financial Times* on 8 December, as Kenneth Gibson said. I appreciate that you might not feel that you were accurately represented, but it was reported that you

"emphasised the need for planners to stand firm."

This is an opportunity for you to clarify those remarks. Are you saying that you did not give that quote to the *Financial Times*?

12:00

Alistair Stark: I do not recall using those specific words. A number of press releases were prepared and, in the nature of press releases, they were collaborative efforts between press staff, staff in our Edinburgh office and me. However, I do not disagree with those words; I am quite happy with them.

Alasdair Allan: The journalist was not asking about general principles but had a specific case in mind—that was the context in which the remarks were made.

Whether or not the remarks were made, I take it that you were not suggesting that Scotland's planning officers, including the chief planner, had not been standing firm of late.

Alistair Stark: No, I certainly would not wish to imply that in any sense.

The Convener: I presume that the statements and the letter that you sent were produced in response to concern that mob rule should not become the norm, given the frenzy about the decision. Was it in that context that you told planning officials to stand firm and keep calm?

Alistair Stark: There was a substantial body of opinion—particularly in the written press—that the planning authority in the instance that we are talking about should have reached a decision that reflected majority opinion in the area. That is not an acceptable way to take a planning decision. One must listen to, evaluate and take into account public opinion, but public opinion can never be the sole criterion when taking a planning decision. We must stand firm on that principle.

The Convener: Given statements that were made at the weekend, have you been reassured that one of the most important things that should be considered in the planning process is the number of jobs that will supposedly be delivered at the end of the process?

Alistair Stark: Of course it is important to consider the economic benefits that undoubtedly flow from many developments. That is always a planning consideration.

The Convener: But it is more important to knock heads together in the planning process than to risk jobs. The planning process can be risked, but jobs cannot.

Alistair Stark: Let me try to put it this way: every development that is proposed brings benefit to the development's proposer, or it would not come forward. However, it is not unusual for a development to bring disbenefit of various sorts to the community. Sometimes the disbenefit is environmental and sometimes it is social, and sometimes there is economic disbenefit to other parties. Those factors, in so far as they relate to the use of the land, must be taken into account and balanced. It is a question of balance. The development plan is a prime source of advice on how to strike that balance, but it is not the be-all and end-all; other material considerations must be taken into account. It is a complex business and we must take account of all factors fairly, openly and clearly.

Patricia Ferguson: I am not as familiar with the planning process and planning legislation as some of my colleagues are. I have questions on a couple of matters and your professional expertise might help to inform my consideration. When an authority comes to a decision about a planning application, how quickly does it normally issue the decision notice? Is there an average time? Are there professional guidelines on the matter?

Roger Kelly: Normally, that would take place as quickly as possible—within a couple of days. In rare cases, it has taken longer for decisions to go out, and that has usually been for technical, legal reasons. However, all planning decisions should go out as rapidly as possible.

Patricia Ferguson: I know that you do not want to deal with particular planning applications, but we can talk about a hypothetical planning application that was discussed with this committee. We were told, and I quote, that there were clearly grounds for calling in the application in question, because

"it was contrary to a recently approved structure plan and it would have an impact on a site of special scientific interest, which is a national designation."—[*Official Report*, *Local Government and Communities Committee,* 16 January 2008; c 454.]

In the case that I am referring to, the planning authority—the local authority—decided not to grant permission, so would there really have been a justification for call-in?

Roger Kelly: I see no reason to disagree with the point that you made first of all about the reasons for call-in. Reasons can be used to justify call-in. The way in which a decision is made locally is part of that, of course—but that is not to say that, just because a decision has proceeded in a certain way locally, it should or should not be called in. It is right that national perspectives are wide.

Patricia Ferguson: So even when an authority has, as Mr Stark said, made a decision after properly going through its procedures, the application could still be called in for reasons that a lay member of the public might feel no longer existed because the application had been rejected.

Roger Kelly: The point that I have been trying to make is that that would be a very unusual case.

The Convener: Bob Doris wants to come back in—do any other members wish to do so? I am not pleading for people, but before I invite Robert Brown to ask questions I want to be sure that all committee members have had an opportunity. I call Bob Doris, who I hope will be brief.

Bob Doris: I am still trying to understand the RTPI's reason and motive for entering the debate. It is fair to say that you entered the debate, because you made the letter to Mr Swinney public. I am sure that you knew that you would get a political reaction; in fact, I will go further and say that I am sure that you knew that you would get a party-political reaction. You have already said in your letter of 12 December that you were very aware of press coverage. You must therefore have been aware that the planning application was becoming not so much a political issue as a party-political football. Did it surprise you that, on 16 December, after the letter had been made available to the press, the Scottish Lib Dem leader Nicol Stephen said:

"This is an exceptional move which underlines the seriousness of the institute's concerns. This matter has grave implications for the conduct of Government"?

Would you like to take this opportunity to dissociate yourself from Nicol Stephen's comments?

Roger Kelly: Thank you, but I do not wish to comment on anything that Nicol Stephen has said.

Bob Doris: So, but—

The Convener: He said no, Bob.

Bob Doris: Do you believe that you have been drawn into party-political shenanigans?

Roger Kelly: It was no part of the institute's role or purpose to be drawn into any such events. Our concern was with the science and art of town planning in Scotland. That is why we acted as we did. We were careful, as far as possible, not to disturb a kind of political situation. We are merely concerned, in a non-political way, with the future of town planning in Scotland, with the respect in which the profession is held and with the way in which its procedures can be clearly seen to work.

That is in everybody's interest, around this table and elsewhere.

Bob Doris: But you could have done that privately with the Government rather than publicly through the media.

Roger Kelly: We thought that it was important to send the message to the minister, and that is what we did.

Bob Doris: Thank you.

Robert Brown (Glasgow) (LD): Good morning, gentlemen, and thank you for your presence this morning. I want to raise one or two specific points. As we have heard, a call-in after a refusal was unusual, if not unprecedented. Was there any dispute in planning circles about the legality of the call-in? Is it totally clear-cut that that can be done, or is there argument about it, whatever the balance of that argument is?

Roger Kelly: There was certainly no doubt in my mind that it could be done.

Alistair Stark: I have never heard the process questioned in that particular sense.

Robert Brown: But it had never been done before. Was there an understanding before the issues arose that call-in was a possibility in the aftermath of a refusal?

Roger Kelly: It was and is my understanding that the possibility is on the table and that if the power has to be used, it should be used according to the advice at the time. I am sure that that is the way in which the Government and the chief planner saw the matter.

Robert Brown: It is fair to say that behind the exercise of call-in decisions lie planning and legal considerations about issues such as the threat of judicial review and the appropriateness and reasonableness of the original decision. There is a mixture of legal and planning issues, is there not? You mentioned once or twice that Aberdeenshire Council would have had legal advice. When Alistair Stark was a planning official with Grampian Regional Council, he would have had legal advice. Would it bother you if a planning minister made a call-in decision on planning advice alone, without considering legal advice?

Alistair Stark: It helps to consider the matter in this way: there are two hurdles to be negotiated or issues to be considered. The first is whether it is legal to issue a call-in direction, and the second is whether it is a proper planning procedure to do so.

Robert Brown: Whether it is challengeable, in other words.

Alistair Stark: There are two tests to be met. As far as I can see, the legal test was met perfectly and, as we have already explored, the Scottish Government judged—and I do not disagree—that there was a national interest in the case.

Robert Brown: Your discussions on 11 December and your letter of 12 December followed Aberdeenshire Council's decision by a week or so. By that time, the centre of the issue had moved a wee bit towards the actions of the Scottish ministers and the First Minister's position. It had become clear by that time that the infrastructure services committee's decision was, as far as Aberdeenshire Council was concerned, the end of the road, for the reasons that you expressed earlier. Is that a correct rendering of the background at that time, as far as you can recall?

Alistair Stark: I can sum up the matter by saying that we were in desperate need of a clear statement of what procedure would be used from then on. I do not think that the public—remember that, ultimately, we are responsible to the public—were clear about what procedure would be followed from then on. Indeed, decisions are still to be made in that respect.

Robert Brown: I confess that, even after all the questions, I am still a little unclear about the concerns that led you to stress in your letter the need for the procedure to be

"transparent, respected and clearly understood".

The procedure in Aberdeenshire Council was manifestly transparent—it was all over the press and there was no issue about that. Were you referring in part to considerations of what took place—or, perhaps more important, what was perceived to have taken place—at the Scottish Government level?

Alistair Stark: In one sense, we were stating the blindingly obvious to ourselves: if the system is to survive, planning decisions must be open and in the public eye. The minute that we find that decisions are taken for obscure reasons and behind closed doors, we lose the public's confidence in the system. As I said, we were simply stating the obvious, reminding the minister of the importance of that and, subsequently, making a public statement to that effect, because we felt that it was important that the public should realise that.

Robert Brown: The blindingly obvious was that there were issues about things happening behind closed doors, whether the process was transparent and exactly how the First Minister might or might not have been involved. Are those the kind of issues about which your members expressed concerns to you?

Alistair Stark: I am not aware of any of our members expressing a concern relating to anything that was said or done by an individual minister, including the First Minister. The concerns

were about where the issue could lead and where it could leave public confidence in how planning decisions will be made in future.

12:15

Robert Brown: Was the possible involvement of Scottish ministers in the decision-making process the background, or a significant part of the background, to the concerns that were expressed?

Alistair Stark: Because the application now lies with Scottish ministers, it is inevitable that the way in which they approach their decision will be the focus of attention. However, that is by no means the whole point.

Robert Brown: We have heard many times in the course of the inquiry the use of the term "quasi-judicial" to characterise the planning system, both at council level and at the level of Scottish ministers. You will accept that that is the way in which the system is normally described, but can you clarify what it means? Is it a fair observation that transparency and the perception of fairness, impartiality and an open mind by decision makers at the appropriate time are key elements of the system?

Alistair Stark: I agree that they are.

Robert Brown: Did you and your colleagues have concerns about transparency and the perception of the system as fair and impartial?

Alistair Stark: The issue was one of perception. In certain quarters of the press, there was clearly a perception that was starting to undermine confidence in the system.

Robert Brown: There is a concern that the actions of Government ministers, rather than of Aberdeenshire Council, may open the decision on the application to legal challenge by discontented objectors in the area. Is it important that the legal and procedural decisions of Scottish ministers are both right in essence and seen to be right in essence, if we are to avoid creating significant potential for legal challenge to their planning decisions?

Alistair Stark: That is true not only of Scottish ministers but of anyone who takes a planning decision.

Robert Brown: In this case, the call-in was a reaction to the decision to reject the application—it was not a decision made on appeal or a call-in preceding a decision. Concerns that the application breached the authority's structure plan and would affect sites of special scientific interest could not be considerations for Scottish ministers at that point, because the rejection of the application had taken them out of the picture. Do you follow the point that I am making? Ministers could not take quite the same impartial approach to the matter that they take when they receive an appeal as of new or call in an application before a council has made a determination.

Alistair Stark: There remained the issue of the application's economic significance, which could be argued to be of more than simply local importance.

Robert Brown: My point relates to the perception of the situation, which was one of the issues that bothered you and your colleagues when you considered the matter and led the institute to write its letter.

Alistair Stark: The issue would have been in people's minds—any planner would have considered it—but I do not think that it was a major consideration. We were much more concerned about the future and reputation of the planning system as a whole.

The Convener: You may want to say something about the matter, given the controversy and excitement that surrounded your previous executive meeting. Earlier I alluded to the fact that ministers have been drawn into commenting on at least three major live planning applications. Are you reassured that the situation is changing, or is there something that we could do to improve the current climate? There is a great deal of commentary on and criticism of the planning process, and ministers have commented on individual planning applications. Is there something that we need to do as a consequence of that? Given the comments and criticisms that ministers have made, it is fair to say that the Government—which says that it is a can-do Government—is unhappy with the current planning process. If the Government is unhappy, would it not be better for it to be up front about that and bring forward changes to the planning system? If so, what would those changes be?

Alistair Stark: Changes to the planning system are in hand. Following the passing of the Planning etc (Scotland) Act 2006, the Government has a whole raft of consultations on secondary legislation and procedures at the moment. The process is under way—to some degree. We hope that there will be a full and fair debate on the issues throughout Scotland. I do not fear for the process.

In terms of individual planning applications, there is the possibility of a loss of public confidence in some quarters, and moves to restore that confidence would be welcome. In particular, we await an announcement on the procedure that is to be followed for this application. Obviously, other applications will fall into the same category in due course. The clearer the process, and the statements that describe it,

the better. When it comes to issuing a decision, the clearer the arguments—and the clearer the way in which they have been weighed against one another—the better. We are in exceptional circumstances; exceptional effort should be made in that direction.

Roger Kelly: As a profession, we are working with the Scottish Government and communities around Scotland towards a clearer system. We intend to go on doing that. If we see ways in which we can help to thrash out some of the procedures and find softer ways of doing things that go beyond the hard bones of the legislation that has been enacted, we will try to use them.

The Convener: Thank you for your time this morning. Your evidence was helpful and informative.

12:22

Meeting suspended.

12:26

On resuming—

Child Poverty Inquiry

The Convener: We will now consider the committee's approach to its child poverty inquiry. Members have a paper on child poverty from the Scottish Parliament information centre, a joint submission from Barnardo's and other charities, and a paper on our approach to the inquiry. The paper contains a proposal to start by having a round-table discussion in Glasgow, on the basis of which we would proceed with our work. We need to agree our approach, so that the proposal can go to the Conveners Group for approval on costs and so on. I invite comments and suggestions.

Johann Lamont: A round-table discussion would help us to identify the areas that we want to work on and would be useful. I do not know whether you want us to suggest further stakeholders to invite. I am keen to invite representation from the for Scotland's disabled children group, which is working on how services are delivered to children with disabilities, including services to help young people move into work as they make the transition between childhood and adulthood. There is an important equalities strand in relation to poverty.

Kenneth Gibson: We should involve representatives of the working for families programme, which plays an important role. We should consider how we persuade the Scottish and Westminster Governments to work together as closely as possible to try to alleviate the appalling level of poverty in Scotland. We should ensure that there is as much co-operation on the issue as possible.

I hope that the Scottish Government will set targets to enable us to track progress towards the 2020 target. That might come up during the debate on poverty in the Parliament tomorrow.

The information on child poverty is disturbing. When I was a councillor in Glasgow, from 1992 to 1999, half of the worst poverty in Scotland was in Glasgow, and that remains the case. Glasgow faces particular issues.

It is shocking that in the United Nations Children's Fund report on child welfare the United Kingdom came out bottom of a list of 21 Organisation for Economic Co-operation and Development countries. That demonstrates how abysmally UK Governments—Conservative and Labour—have served our children in recent decades.

12:30

David McLetchie: I have no objection to a round-table discussion with the stakeholders who

are identified in the paper and the people whom Johann Lamont suggested. However, is it more convenient to have the meeting in Glasgow than to do so in Edinburgh? All committee members, clerks and officials must be in Edinburgh on Wednesdays. Are all the organisations that we would invite—Barnardo's, the Child Poverty Action Group, NCH and so on—based in Glasgow? What is the point of having a caravan go to Glasgow—apart from for tokenistic reasons—if most people are based in Edinburgh or its environs?

Johann Lamont: I hope that we will hear from families who live in poverty. We can do that in Edinburgh or Glasgow, but Kenny Gibson talked about where deprivation is most notably experienced, and the committee could open up and meet elsewhere. We are talking about going only as far as Glasgow, but we should give consideration to meeting in different parts of the country. Perhaps members could meet in smaller groups to take evidence throughout Scotland, as has happened in the past. We do not have to go as a full committee in full attire, accompanied by the microphones and so on, but outreach work is important.

The Convener: We can take soundings on that.

David McLetchie: I have no objection to the committee taking evidence from individuals and families, so that those people can describe their experiences. It might be appropriate for us to go to Glasgow or elsewhere in Scotland for that purpose. However, as I understand the proposition, our initial meeting will be with stakeholders, whom I take to be organisations with an interest in the issue—I might be wrong. If most of those organisations are based in Edinburgh or its environs, I do not see the point of a great trail to the west.

The Convener: Is there a consensus in the committee on that?

Johann Lamont: Some of the organisations have volunteers and members who speak from direct experience, so we will not necessarily talk only to employees. Organisations might choose to send an employee, but other people are capable of speaking about their experiences.

Patricia Ferguson: Kenny Gibson and Johann Lamont made good points and I am perfectly in agreement with the proposal to go to Glasgow. That would not be tokenistic; it would be symbolic, and symbols are important. It is important that the Parliament sends a signal that it is willing to go to where people are to talk to them.

Kenneth Gibson: I echo that. Glasgow is the heart of the problem that we must face in this country and it is important that we meet there. I realise that the clerks are probably not based in Glasgow, but five of the eight members of the committee are from Glasgow or from points west, from which they must travel through Glasgow to get to Edinburgh. I do not regard it as a particular burden for the committee to go to Scotland's largest city—

The Convener: I hope you are not suggesting that David McLetchie would be presented with problems getting into Glasgow.

Jim Tolson: I have broad sympathy with David McLetchie's point. Committee members go where we need to go; that is our public duty—I guess that that applies to the officials, too. However, we should not uproot ourselves and go to the other side of the country unless there is good cause. Some members have intimated that there is good cause. I will not die in a ditch over the issue. I am quite happy to go to Glasgow.

The Convener: The search for consensus continues.

Bob Doris: I am agreeing with Patricia Ferguson and Johann Lamont—on the same day. Our going to Glasgow would be symbolic. There is serious poverty in west-central Scotland. We are talking not about uprooting the committee but about a train journey of 50 minutes. That is not a big deal for the committee, but it is a big deal for community activists and representatives who might want to come and hear the round-table discussion. We should meet in Glasgow.

The Convener: I think that there is majority agreement that we endorse the paper and proceed with arranging a round-table discussion in Glasgow.

12:34

Meeting continued in private until 13:08.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 8 February 2008

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by RR Donnelley