LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 28 January 2009

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
3rd Meeting 2009, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Alasdair Allan (Western Isles) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow) (SNP)
*Patricia Ferguson (Glasgow Maryhill) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Mary Mulligan (Linlithgow) (Lab)
*Jim Tolson (Dunfermline West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Paul Martin (Glasgow Springburn) (Lab)
Alison McInnes (North East Scotland) (LD)
Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Oonagh Gil (Scottish Government Directorate for Planning and Environmental Appeals)
Stephen Hall (Scottish Government Directorate for the Built Environment)
Norman MacLeod (Scottish Government Legal Directorate)
John McNairney (Scottish Government Directorate for the Built Environment)
Stewart Stevenson (Minister for Transport, Infrastructure and Climate Change)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 1

Scottish Parliament

Local Government and Communities Committee

Wednesday 28 January 2009

[THE CONVENER *opened the meeting at 10:00*]

Decisions on Taking Business in Private

The Convener (Duncan McNeil): Good morning and welcome to the third meeting in 2009 of the Local Government and Communities Committee. As I usually do at this stage, I ask members of the committee and the public to turn off all mobile phones and BlackBerrys.

Agenda item 1 is to seek the committee's permission to take in private agenda item 10, which is consideration of an approach paper on the committee's work on equal pay, and its future consideration of a draft report on national planning framework 2.

Do members agree to take in private item 10?

Members *indicated agreement*.

The Convener: Do members agree to take in private at future meetings consideration of a draft report on NPF 2?

Members *indicated agreement*.

Subordinate Legislation

Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009 (Draft)

10:01

The Convener: We move on to agenda item 2, which is evidence from the Minister for Transport, Infrastructure and Climate Change and his officials, on draft regulations. During this agenda item, the minister and his officials can respond to members' questions. I welcome Stewart Stevenson and, from the Scottish Government, John McNairney, deputy director of planning; Stephen Hall, senior planner; Alan Cameron, senior policy officer; Norman MacLeod, senior principal legal officer; and Oonagh Gil, deputy chief reporter. I remind the witnesses that we have requested that they remain at the table until all the agenda items on subordinate legislation—items 2 through to 9—have been considered.

I invite the minister to make introductory remarks.

The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson): I very much welcome the opportunity to answer questions from the committee on the complete package of planning regulations that were laid at the end of last year. The regulations are required to implement a major element of planning reform and will, if they are agreed to, put in place a new planning system for development planning and development management, and a new appeals structure.

That is just one area of our drive to reform the planning system, so the regulations should be considered in that wider context. For example, the Parliament is considering national planning framework 2, which sets out a strategy for Scotland's long-term development and identifies priorities for the improvement of national infrastructure. We are consolidating and rationalising national planning policy. The first two parts were published last year and we will consult on the final thematic section in March.

We have a shared commitment by the Government, local authorities, key agencies and the development industry to agree, and to keep under review, positive actions to support reform. Once they are introduced, the regulations will help to create a planning system that is effective and efficient, but which acknowledges the important role that communities have in the decision-making process. We have consulted widely, and the clear message from responses is that things need to be

simplified. We have done that to as great an extent as possible, given the provisions of the Planning etc (Scotland) Act 2006.

The planning system is process driven, but it is important to remember that it plays a particular role in creating high-quality environments, and that it should be a positive force for shaping our communities, in which it is crucial to the delivery of strong and sustainable economic growth.

The Convener: I offer committee members the opportunity to ask questions of the panel.

David McLetchie (Edinburgh Pentlands) (Con): Good morning, minister. You were right all along—in comparison with this lot, the national planning framework is, indeed, "a rattling good read".

Something puzzles me slightly about the first set of regulations. The recommendations that would be declined would have been made by a person appointed by the Scottish Government. One would expect that person to be conversant with, and expert in, planning law—for example, someone who was attached to the inquiry reporters unit. How could such an appointed expert person reach a conclusion that was inconsistent with the national planning framework, the strategic development plan or a national park plan, that was incompatible with the Conservation (Natural Habitats, &c) Regulations 1994 (SI 1994/2716) and which was somehow so unreasonable that it bore no relation to the evidence that was considered? How could such a situation arise?

Stewart Stevenson: David McLetchie puts his finger firmly on an important point. That eventuality is extremely unlikely, because the professional people who are involved have the necessary skill set and do not get such things wrong. However, that distant and unlikely prospect exists in any system that is based on the work of human beings. In the tens of thousands of parachute jumps that are made every year, the reserve chute is used extremely rarely. The provision falls into the same category.

I invite Stephen Hall to expand on my answer.

Stephen Hall (Scottish Government Directorate for the Built Environment): I will add just that we expect most of the people whom ministers appoint to be reporters from the directorate for planning and environmental appeals. As David McLetchie said, they will be extremely experienced in undertaking such appeals. The directorate is held in high esteem by the planning profession and is widely trusted. As the minister said, we expect the regulations to be called into play rarely.

David McLetchie: I accept that and I agree with what you said about the quality and qualifications of the personnel who are likely to be involved.

I am slightly puzzled as to why the arbiter of whether the expert has got it wrong is the planning authority and not the minister. In straightforward terms, why is the local council the arbiter of a test—of whether a decision was completely contrary to the evidence—that a court would normally apply in the judicial review of decisions? Why is the council the determiner of the national planning framework's content? In the rare situations in which something goes badly wrong, surely the arbiter of whether the decision was wrong should be the Government—not the council whose development plan is involved. Surely ministers are competent in that regard.

Stewart Stevenson: Thank you for your kind words. Ministers can call in plans, when that is appropriate. Ultimately, whether the process was correctly applied can be reviewed in the Court of Session. Matters can be resolved through a hierarchy.

I take this early opportunity to say that we place a high value on local accountability. The core of the planning system is the local authority. We must trust councillors to make decisions that are in the interests of the people whom they were elected to represent. I suspect that we will return to that subject when we deal with the other statutory instruments, and that I will repeat that statement.

Matters can be progressed through a hierarchy, so Mr McLetchie's well-founded confidence in ministers is backed by our ability to call in plans when necessary.

David McLetchie: If the examination process had been followed, the local authority had declined a recommendation on the basis of a reason in the regulations and ministers were unhappy with the local authority's declinature, then they could call in the local plan and correct the situation. Is that correct?

Stephen Hall: At the end of the process, when a local authority wishes to adopt its plan, the authority informs ministers of that. Ministers then have 28 days in which to tell the authority that it cannot adopt the plan and to call in the plan for approval by ministers or to ask the authority to modify the plan.

David McLetchie: So the local authority's decision is not necessarily the end of the road.

Stephen Hall: That is correct.

Stewart Stevenson: For clarity, the minister does not need to take action. The plan is adopted if the minister takes no action within 28 days. We should consider what has happened in the past

and what would be likely to happen in the future. The minister will take no action if the plan is satisfactory; therefore, it would be adopted.

Alasdair Allan (Western Isles) (SNP): Will the proposals effectively restrict the grounds for declining to follow recommendations?

John McNairney (Scottish Government Directorate for the Built Environment): Currently, a reporter's recommendation might be set aside and not taken on board by the planning authority. The roots of the legislative change are in trying to ensure that the public have more faith in the system and are more willing to engage in the development plan examination process. Essentially, we are looking to restrict tightly the grounds on which planning authorities can set aside a reporter's recommendations. That is what the regulations will do.

Alasdair Allan: I would like to confirm the thinking behind the regulations. Is the aim to make the public understand the process more clearly or to ensure that they have more confidence in it?

John McNairney: The objective is to ensure that members of the public can have more confidence in the system than they currently have.

Stewart Stevenson: That takes us back to where Mr McLetchie started. Professionals are engaged in the process. Therefore, we need clear reasons why their views have been rejected, and we need clear documentation on why. The regulations simply draw together what people probably think is a normal and natural way to deal with things in any event. They redraw the line of balance a little bit.

Bob Doris (Glasgow) (SNP): You have gone some way towards answering most of the questions that we wanted to ask. However, will you give a little bit of clarity on the current situation and the situation that we are moving to? Currently, a planning authority can set aside a reporter's recommendation on a local plan. Does it have to give detailed reasons for doing so?

Stewart Stevenson: We want people to explain at every stage of the planning process why they have reached their conclusions. That is an important thread that runs through what we are trying to do.

Bob Doris: Does the Government currently have specific criteria that must be adhered to in setting aside recommendations?

Stewart Stevenson: If I, as a minister, approve or reject a recommendation, I must give reasons for my decision. The regulations will extend what should be done a little bit further.

Stephen Hall: As the minister said, under the current system, an authority can depart from any reporter's finding, but it must give its reasons for doing so, as it will have to do under the new system.

Bob Doris: Are reasons for doing so laid down under the current system? Is there a set of guidelines that local authorities must follow?

Stephen Hall: No.

Bob Doris: Are the local authorities unfettered? Can they cite any reasons they want for departing from a finding?

Stephen Hall: Yes. There is no description of what their reasons should be. Any reason can be given.

Bob Doris: Right. So is this the first time that criteria will be set out for setting aside a recommendation?

Stephen Hall: Yes. That is correct.

John Wilson (Central Scotland) (SNP): I am interested in what Mr McNairney said about trying to instil public confidence in the process. What is the problem with public confidence in the planning process at the moment? Much play has been made of planning professionals and the public being against each other. In the past 18 months, I have been involved in a number of cases in which the public have felt that planning decisions have not gone the way they wanted them to go. How can we instil confidence in the public if the previous planning regime failed?

10:15

Stewart Stevenson: Because of their experience, I am sure that all members will understand that not everyone will get from the planning system the answers that they seek, whether they are seeking to promote or oppose a scheme. The debate is not about changing the nature of the decisions: it is about changing the nature of the decision-making process, so that the basis upon which decisions are reached is more clearly focused along auditable, understandable, documented and rational process paths. At the end of the day, the decision might not necessarily be different, but we should have a process that is clear about why the decision was reached. We will certainly never get ourselves to the position where everyone gets what they want out of the planning system, because that is not in the nature of planning.

John Wilson: I accept that not everyone will get what they want out of the planning decision-making process. I am trying to draw out how the proposals that are before us today will instil more confidence in any member of the public who engages with planning decision-making structures and feels that they will show no major difference

from the existing procedures, apart from getting more detailed reasons for decisions, which I thought people who object to planning proposals already get through the local authority planning process. When a planning proposal is made, officers have to outline the reasons for accepting or rejecting it to applicants, local authorities and objectors to the proposals. I am just trying to get at what is so different about the new proposals compared to the existing regime.

Stewart Stevenson: One of the key issues is that, by defining the grounds for rejection and thereby not allowing open season for something to be rejected for any reason whatever, we are building confidence in the process and in the individuals who make the decisions—particularly the councillors—by giving them the protection of a rational set of reasons from which they can choose to reject a plan. That is as important as anything else, and it will build confidence in the councillors who make the decisions. Mr McNairney would like to expand on that.

John McNairney: For many individuals and communities, it takes a lot of energy, commitment and courage to engage with an examination process that can be quite daunting, particularly to a lay person. If, having committed to engage with the system, you complete that lengthy process and an independent report has made a clear-cut recommendation, it can be surprising and disappointing, and it can prevent you from engaging with the planning system in the future if the recommendation is set aside on a basis that you consider to be arbitrary. That is why I said that the regulations are, in part, about building confidence in the system. They will provide clarity by condensing to a few grounds the bases on which the planning authority can set aside reporters' recommendations.

The Convener: As there are no other questions to the panel, we will move to the debate on the motion. I invite the minister to move the motion.

Motion moved,

That the Local Government and Communities Committee recommends that the draft Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009 be approved.—[*Stewart Stevenson.*]

Motion agreed to.

Town and Country Planning (Development Planning) (Scotland) Regulations (SSI 2008/426)

The Convener: Agenda item 4 is consideration, under the negative procedure, of three items of subordinate legislation that are related to the instrument that we have just considered under the affirmative procedure. The minister and his officials will be able to answer any requests for clarification. As members have no questions on the regulations, are we agreed that we do not wish to make any recommendations in relation to them?

Members *indicated agreement*.

Planning etc (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (SSI 2008/427)

The Convener: The Subordinate Legislation Committee noted a single typographical error in the order, so an amendment order has been prepared. Consideration of the amendment order will follow immediately after our consideration of this one. As members have no requests for clarification on the order, are we agreed that we do not wish to make any recommendations in relation to it?

Members *indicated agreement*.

Planning etc (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Amendment Order 2009 (SSI 2009/18)

The Convener: The amendment order is required to correct a single typographical error that the Subordinate Legislation Committee noted in Scottish statutory instrument 2008/427. Do members have any points that they need clarified on the amendment order?

David McLetchie: We should congratulate the Subordinate Legislation Committee on being so sharp-eyed that it noticed a missing "s". That is a great credit to the members of that committee and the assiduity with which they follow their brief.

The Convener: Indeed—they were doing their job. As members have no further comments, do we agree that we do not wish to make any recommendations in relation to the amendment order?

Members *indicated agreement*.

Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (Draft)

The Convener: Agenda item 5 is consideration of an item of subordinate legislation under the affirmative procedure. Again, we will take evidence from the Minister for Transport, Infrastructure and Climate Change on the draft regulations. I invite the minister to make introductory remarks.

Stewart Stevenson: I will speak fairly briefly. The Planning etc (Scotland) Act 2006 introduced

in primary legislation the hierarchy for planning and defined the three categories—national, major and local—to which all developments will be allocated. The draft regulations describe and assign classes of development to the categories of major and local developments. National developments are designated through the national planning framework. The hierarchy is at the heart of the proposals for planning reform and the intention is that it will encourage a more proportionate approach to processing planning applications, and focus resources on proposals that involve greater economic benefit or environmental impact. The approach concentrates on making the system more fit for purpose and efficient.

Mary Mulligan (Linlithgow) (Lab): I have a brief question. When you decide on thresholds, there is always an issue about cases that are a little on either side of the threshold. In the classification of transport infrastructure projects, the cut-off point for major developments is a length of 8km. Why was that length chosen? When I first considered the issue, I thought about the new Forth road bridge, but that is in the national planning framework and is therefore not just a major development. However, other bridges that are less than 8km might be seen as strategic and therefore as major developments. How would those be picked up in the system?

Stewart Stevenson: The point that we must remember in any event is that you can treat things that fall below a threshold as if they were above the threshold if it makes sense so to do. Having had a little think about it, although the Clackmannanshire bridge itself is not 8km, I am pretty confident—although not certain—that when the roads on either side of the bridge are added you probably get to 8km. If it did not come to 8km, I would nonetheless think that one would be likely to end up deciding to treat it as if it had. The thresholds compel us to treat things in a certain way, but if the development is below the threshold we could still take the view that it should be treated as a major development. None of my officials is disagreeing with me.

Mary Mulligan: Why 8km?

Stewart Stevenson: All the figures that are associated with the thresholds are subjectively chosen. We try to strike the balance of advantage, which is why it was important to find out during the consultation process what the right numbers are for the different thresholds to establish whether a development is major, minor, national or whatever. To some extent, it is inevitable that the figure is not objectively supported by evidence that it must be 8km rather than 8.2km or 7.8km, because it is not that nature of figure. That is why it is important that, after the draft regulations have been in place for a while, we review whether they are delivering the outcomes that we expect. We expect to start the review process after one year. The review will not necessarily lead to changes, but given that the figures that have been chosen are derived from consultation rather than having been scientifically derived, we will certainly keep an eye on the matter. The previous Administration—this was supported across the Parliament—decided that the matter should be addressed in secondary legislation so that we can refine and adapt the thresholds in the light of experience.

Mary Mulligan: I used the 8km threshold as an example, but for each threshold, if a development is below the threshold, will it be ministers or the local authority that can decide that it is more important?

Stewart Stevenson: There will also be schemes of delegation. Local authorities will form their own views on what they want in a scheme, but it must be approved by ministers, so they are not distant from the decisions that local authorities make. It is clear that planning in central Glasgow is very different from planning in, for the sake of argument, Dornoch in the Highlands. There would therefore be no expectation that each of the 34 planning authorities would come up with exactly the same schemes of delegation. There is flexibility, but we have set out our stall in the draft regulations.

Bob Doris: If something is classified as a major development—the draft regulations contain the criteria and guidelines according to which such classification will be made—is there a difference in how local authorities would consult the communities concerned?

John McNairney: The development management regulations, which the committee will consider following this item, set out provisions for enhanced scrutiny. They explain that, along with national developments, a major development would be a candidate for pre-application consultation of the community. Major developments that are significantly contrary to the development plan would, at the end of the process, be subject to a pre-determination hearing and a decision by the full council of an authority. There is therefore a link to how planning authorities will process major developments.

10:30

Major developments are also candidates for processing agreements, which are not contained in legislation, because existing provisions allow the planning authority to vary the timescale for processing a planning application. The intention is that, for major developments with a processing agreement, there will be a more realistic timescale

for determining the application. At the outset, key agencies, the developer and the planning authority will get together and will be clear about the information requirements and the timescale for processing the application. Essentially, the draft regulations are about promoting efficiency by identifying the types of development that need to be project managed through the system, regardless of the outcome.

Stewart Stevenson: Efficiency is important to the communities involved. We are spelling out a plan that will promote efficiency in processing major developments and which will make it clear in advance how the process of decision making will be documented. People or bodies in the community who are engaged in the process of opposing the development will have greater certainty about how the development will be dealt with, and about timescales. That will not only help those who are involved in the planning process to prepare and to organise themselves; it will help those who are seeking to oppose the development to organise themselves and to structure their approach. It is important to bear it in mind that the process is not just efficient for the developer; there are potential efficiency benefits for opposition, too.

Bob Doris: That is a useful point. In my experience, communities sometimes oppose developments, because they are sprung on them—the first thing people see is a poster on a lamppost. The provision of pre-application scrutiny and consultation could lead a lot of potential objectors to buy into projects, so I would encourage that as a positive measure for speeding up the planning process.

I know that you had to pick numbers and criteria to distinguish between local and major projects. I was interested to see the threshold set at 50 housing units. I know that you had to pick a number—if you had set the threshold at 100 or 200, people might have had issues with that.

If an area is zoned for housing and a developer comes along and builds 40 houses one year, 40 houses the next year and 40 houses the year after that, there would never be a major development as such, but the overall effect would be the same as that of a major development. How would such a situation be dealt with?

Stewart Stevenson: You are right to say that 50 is an arbitrary number. Mary Mulligan made a similar point earlier. We started the consultation process with the thought that 100 would be the right number, but the workshops that we held led to the conclusion that, on balance, the right number was 50.

You asked about the cumulative effect. The plans that the local authority makes in designating areas for housing development are the right point at which that should be considered. The nearest village to me, which is 3 miles away, has 85 houses. There is a development there, involving—from memory—a dozen houses, which is a significant development for that community. Of course, the council can deal with that appropriately and can ensure that there are opportunities for the community to engage.

What we are doing is setting the benchmark for what happens when a development comprises 50 houses. There is always flexibility for the local authority to consider things. The point at which a council designates land and says that it has been put aside for 282.5 houses is important. Of course, that does not take away the opportunity for people to be engaged in developments as they happen, because each development of 40 might have quite different characteristics.

John McNairney: The key is the plan-led system that we are trying to promote, in which communities are given a real opportunity to engage constructively in the process. It is difficult to predict whether a developer would want to submit an application for 49 houses to avoid the requirement for pre-application consultation, although I have to say that house builders increasingly accept the benefits to their scheme, and to the process, of engagement in pre-application consultation with communities. There is a lot of guidance out there, some of which we provided, on the best ways of doing that. The landscape is generally much more positive. There are, of course, benefits for the developer in putting in an application that is above the threshold, simply because of the focus on front-loading the system and processing the application through it.

Alasdair Allan: Is it correct to say that minor developments will now fall outwith the scope of the planning system or will no longer require planning consent?

Stewart Stevenson: No, no—not at all. A separate piece of work relates to permitted development rights, which could be described as you suggested in your question, but it will come later. We expect a scheme of delegation to deal with many minor developments. Under such a scheme, the decisions will be made by officials, but the appeal process will involve councillors. Minor developments will certainly not drop out of the planning system.

Alasdair Allan: In that case, do you plan a public education programme on that process so that the public understands the point that you just made?

Stewart Stevenson: We are delivering more powers and responsibility to community councils across the planning reform agenda in general. We will work with them, in particular to ensure that

they understand their additional responsibilities and role in the system and are equipped to deal with it, because it is an important part of that agenda.

How do people engage with the planning system? It is likely that they engage when there is a development that they feel affects their interests. The financial support that successive Governments have provided for organisations such as Planning Aid for Scotland is probably the best way of ensuring that the public have access to the advice, training and education materials that such organisations provide.

John McNairney: Once the regulations are in place, we will work on an easy-read guide to the new system in order to set out the principles more effectively for the general public.

There is on-going consultation on increasing permitted development rights for householder developments. Once we finalise the regulations, we will back them up with images that make them more user friendly and easier to understand. That material will come out of the planning system.

David McLetchie: Can we look at the hierarchy with reference to a specific example with which the committee is familiar? I ask the minister to confirm whether the application for the Menie estate development—otherwise known as the Trump development—would have been classified as a major development under the hierarchy, had it been in operation at the time.

Stewart Stevenson: I speak from memory, but I think that the number of houses involved in that development is substantially in excess of 50, which would elevate it from being a minor development. In that sense, it would certainly be classified as a major development.

David McLetchie: If I remember the circumstances correctly, that major development was contrary to the local plan, and it would also be contrary to the local development plan under the new system. Is that correct?

Stewart Stevenson: I was not part of the decision-making process, although I could have been. The development was so close to the boundary of my consistency and was to have such an impact on it that I was not part of the process. As I know about the details only informally, I do not wish to take the risk of misleading the committee. Although I accept the generality of what you are saying, I speak more as a constituency member with an informal understanding than as a minister involved in the detailed consideration of any of the material associated with that application.

David McLetchie: Your caution is welcome. For the purpose of this discussion, let us assume that the Menie estate application was a major development that was contrary to the local development plan, which I think we will find is the case. Would that mean that, under the draft regulations, a sub-committee of a council, pursuant to a scheme of delegation, could never again take the final council decision on the matter and that, were we rerunning the Trump application under the new system that is being introduced, the final local decision would be taken by the full council of Aberdeenshire Council and not by a committee?

Stewart Stevenson: Yes.

David McLetchie: So we will have no more Trumps.

Stewart Stevenson: I am simply confirming the question about the specific process. My ability to look into the future may be more restricted than my ability to answer questions about the instruments that are in front of the committee.

David McLetchie: We know how far sighted you are.

I will ask a final question to give me an idea of scale. Is there any estimate of how many applications a year in Scotland are likely to be major developments?

John McNairney: It is difficult to be precise, particularly in the current climate. Of the 50,000 planning applications that go through the system annually, half are householder developments. Between 4 and 10 per cent might be major developments, although it is difficult to predict how many will be submitted over the next year or 18 months.

David McLetchie: I accept that it is dependent on the level of economic activity, but how many major developments were there among the applications that were processed in 2007, for example, when the economy was buoyant before the credit crunch hit?

John McNairney: The figures that we collect from planning authorities are based not on the hierarchy in the regulations but on lower thresholds. We take figures on developments of 10 houses and more, for example. However, about 5 per cent of last year's applications were major developments.

David McLetchie: In broad terms, that means about 2,500 a year.

Stewart Stevenson: That is the figure that I have worked out.

John Wilson: I was heartened by your comment about engagement with community councils in the planning process, but those bodies do not cover all of Scotland. What remedies will be put in place to enable people to engage in the

planning process in localities where there is no community council? Are you saying that the Scottish Government will campaign throughout Scotland for more community councils to be established to allow for local democracy in the planning process?

Stewart Stevenson: I suspect that, whatever efforts might be made, it would be impossible to achieve 100 per cent coverage. My constituency—I have no particular knowledge of other members' constituencies—probably has approximately two thirds of the community councils that it might have. I have a highly diverse constituency, with urban, rural and even remote areas.

I am not sure that community councils are my responsibility—nobody present is suggesting that they are—but I would be happy to speak to the relevant minister when I have checked exactly who it is.

John McNairney: The primary legislation requires that, before a planning application for a major development is submitted, the developer must give the planning authority notice of his proposal and an outline of the organisations that he intends to consult. The planning authority might request that consultation takes place with another body of interest in the community, in addition to the community council. Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, to which we will come, the developer will need to carry out a range of consultation that involves holding one public event and advertising the proposal to hold such an event.

10:45

There is a basic framework that provides authorities with the scope to ensure that any proposals for a major development are subject to pre-application consultation that is fit for purpose. When the application for a major development is submitted, it must be accompanied by a report on that consultation process, which the authority will take into account in due course. That does not supersede or remove the need for communities to engage with the process later on and to make representations, but there are safeguards at the start of the process to ensure that a major developer undertakes appropriate, proportionate consultation with the local community.

John Wilson: I welcome that response.

Local authorities are responsible for determining the geographical size of the areas served by community councils and how community councils are established. However, a development of more than 50 housing units, which may be seen as a major development in a local area, may involve not a community council, which deals with a larger area, but a tenants or residents association. Would it be appropriate to give guidance to local planning authorities suggesting that, where appropriate, such bodies be included in the consultation process, instead of leaving that to chance? A developer may say that, because there is no community council in the area, there is no local organisation with which it can consult, ignoring the fact that there is an active tenants association or residents association.

Stewart Stevenson: Councils have a duty to identify appropriate bodies. In my constituency, as well as those of other members, there are a number of community associations that are essentially indistinguishable from community councils. Some communities have decided, for whatever reason, to take that bottom-up route instead of setting up a community council under the aegis of the local authority. If there were a major development in Gigha, it is likely that Argyll and Bute Council would deem it appropriate to consult the Isle of Gigha Heritage Trust, which was responsible for the buyout there; the same might be true elsewhere. I would be surprised if councils did not want to involve community associations and tenants associations in the process.

You asked whether we will provide guidance on the issue. At this stage, the answer is that we will consider what you have said and seek to identify the appropriate way of ensuring that councils make the right decisions—decisions that are sustainable and supportable. Of course, everything that happens will be part of a published plan. If a local council does not do the right things, that will be evident to the public, as it will be on the public record; the plan will also inform the way in which the public engage with the application as it goes through.

John McNairney made the important point that, increasingly, developers see that there is huge merit in engaging with communities in advance, as that smoothes the way, enables them to refine their plans and provides them with an indication of assurance in relation to how the process will move forward and the resources that they need to commit to it. I suspect that, if councils fail to identify all the bodies that should be involved, developers may assist with that. The fact that this is all in the public domain and on the record and that there is a benefit to everyone involved in the process early on means that all the prospects are in place for the process to work reasonably well.

The Convener: As there are no further questions, and it seems that no member wishes to debate the draft regulations, I invite the minister to move motion S3M-3181.

Motion moved,

That the Local Government and Communities Committee recommends that the draft Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 be approved.—[*Stewart Stevenson*.]

Motion agreed to.

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432)

The Convener: Item 7 is consideration of three instruments under the negative procedure that relate to the instrument that we have just considered under the affirmative procedure.

If there are no questions on the first set of regulations, is it agreed that we wish to make no recommendation on the regulations?

Members *indicated agreement*.

Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (SSI 2008/433)

The Convener: Does any member have a question on the regulations?

Mary Mulligan: How many local authorities operate a scheme of delegation?

Stewart Stevenson: All of them. I would like to bring in my official to say on the record whether the two park authorities operate such a scheme, given that they, too, are planning authorities.

John McNairney: One park authority has a scheme of delegation, but I think that the Cairngorms National Park Authority does not.

Stewart Stevenson: I thought that it was important to give a complete answer.

John McNairney: The national parks have different powers under the park orders.

Mary Mulligan: At what stage do local elected members play a role in the scheme of delegation? How does a local member who does not agree with a decision on a delegated issue make that known?

John McNairney: The planning authority will agree on the scheme of delegation that sets the threshold up to which their officials will take decisions. The situation will vary throughout the country, as is the case at present. Under local government legislation, authorities have powers to operate schemes of delegation, although few of the current schemes allow officials to refuse applications. Under the new system, planning authorities will draft a scheme of delegation for ministers to endorse. Under such schemes, and subject to conditions that the respective planning authority will impose, officials will take decisions on local but not major developments. Depending on the number of objections that are lodged or representations that are made by community councils, officials will make decisions under the scheme of delegation.

If an applicant is unhappy with the decision of a planning officer on—let us say—a hot-food takeaway or an office extension, they could seek a review from the planning authority. They will no longer have to appeal the decision to ministers as is the case at present. In the review process, members of the local review body will look afresh at the case. In future, members who sit on such a review body will engage in planning applications that have progressed down the scheme of delegation route.

Mary Mulligan: You mention a review body. Will that be the planning committee?

John McNairney: The regulations refer to a committee of the planning authority that comprises no fewer than three members. Our original consultation proposal was that the review body should involve between three and five members of the authority, some of whom might be planning committee members. Following the consultation and workshops that we held with stakeholders last summer, we removed the ceiling, to give authorities more flexibility to establish local review bodies that are appropriate for their areas. In some areas, the membership might be small, whereas in other areas it might be larger. The regulations do not prevent the review committee from being much larger; that would be agreed by the planning authority.

Stewart Stevenson: The regulations permit a local authority to have multiple instances of the review committee, which might be required in geographically large areas such as Aberdeenshire and the Highlands, where council decision making has an area facet. The regulations allow but do not require councils to have several instances of such a committee.

Mary Mulligan: John McNairney said that an applicant can appeal. If a planning officer takes a decision under delegated powers with which local elected members are unhappy, can councillors override that decision?

Norman MacLeod (Scottish Government Legal Directorate): Once a decision is made, the question is whether the applicant appeals it. However, before a decision is made, flexibility is built into the primary legislation to allow the local authority to recall the decision—that is the terminology—for the committee or the full authority to make, rather than have a delegated decision. The mere fact that an application falls within the

scheme of delegation does not require it to be determined by an appointed person. Planning authorities still have the flexibility to have a decision taken by a committee or by the full council.

Mary Mulligan: That answer is helpful. Thank you.

John Wilson: I will ask about an issue that arises from the regulatory impact assessment, which says:

"Scottish Ministers will have a role in the approval of schemes which each local authority will be required to review at least every five years."

I suggest to the minister and his officials that such a review should take place at least every four years. That would coincide with, rather than be out of kilter with, the local authority election cycle. Changes that occur in local authorities because of the normal electoral cycle might require a review and newly elected members need to be brought up to speed with local delegated powers.

Mary Mulligan asked how the local review body would be established, who its members would be and whether it would consist of planning committee members. An officer's delegated power to make decisions on planning applications might be challenged before a local review body whose members were not planning committee members. If the issue went to a full planning committee, the delegated officer's decision that had been challenged by the local review body might then be challenged by the planning committee. Is that scenario likely, or will the local review body be outwith the planning committee process? I am trying to pin down which body has the ultimate authority locally to determine appeals against planning application approvals or rejections.

11:00

Stewart Stevenson: John Wilson asked two questions. The first was about holding a review every five years. The regulations say:

"The planning authority must prepare a scheme of delegation at intervals of no greater than every five years."

Bearing in mind that current councils may serve for five years, I think that that is reasonable. Of course, the regulations therefore provide, but do not mandate, that such reviews can be done on a four-yearly cycle. It is probably right to have that flexibility. Mr Wilson's point about aligning reviews of schemes with changes in administration and personnel has some merit but, at the end of the day, it is probably appropriate that the councils are in the driving seat. I suspect that a five-year review cycle is fine. I invite Mr McNairney to respond to your question about the decision-making process.

John McNairney: It will not be possible for the planning committee to revisit the decision of the local review body. The process is that the official will take a delegated decision on an application in the local developments category. If an applicant is aggrieved by that decision, they will seek a review by the local review body. The decision of the local review body will be final, short of an appeal to the Court of Session. That will be the decision of the authority on review.

The members who sit on the local review body will have had no previous involvement in the planning application that comes before them. Their focus will be on reviewing the decision that was taken under delegated powers. Is that helpful?

John Wilson: I am not sure that it is because what you describe might muddy the waters slightly in relation to the local review body and the delegation of powers. You referred to an applicant whose planning application is rejected. Another aspect is what happens when a planning application is approved and objectors wish to object to the decision being made by the delegated officer.

I have a vested interest as a local elected member who is not on a planning committee but who has some influence on aspects of planning applications that come before us on a local ward basis and must declare whether I am happy with the delegation of authority over planning applications. I would like clarification because I am not clear how a local review body can make a decision when the local authority's planning committee is excluded from reviewing the local review body's decision-making process. In the hierarchy of decision making, where does the planning committee sit in relation to an officer's delegated powers? Given that we are talking about minor developments, I suppose that we will not end up with a Menie estate scenario if the local review body makes the final decision with no right for the full planning committee to intervene, but will you make it clear that local review bodies will not be subject to scrutiny or decisions being overturned by the full planning committee or the full council?

Stewart Stevenson: It is important to go back to the point that there is no limit to the number of people who can be on the review body. When a planning application goes to the review body, it will be the first time that politicians will have considered it. If a local council decides that the membership of the review body should be identical to that of the planning authority, it will be a matter for that council. The regulations offer councils the flexibility to structure things in a way that they determine meets their needs. The only requirement is that at least three people should be

on the local review body. I invite Mr McNairney to expand on that.

John McNairney: The planning committee will delegate to its officials the authority to take decisions on certain planning applications, as they do now. The key change that the 2006 act brought about is that there is a new scheme of delegation and a link to local review. Through the scheme of delegation, the planning committee will already have agreed which applications it has entrusted to officials to take decisions on. It is the challenge that is new.

In some planning authorities, virtually all their councillors might be members of the planning committee. There are some merits in the local review body having on it councillors who have built up planning expertise over time, but the decision on which councillors should be on the local review body will largely be for the planning authority to take.

As regards the point that you made about people who make representations, there is at present no third-party right of appeal and the package of reforms of the planning system contains no such proposal. When an applicant is unhappy with the terms of a decision on a local application, the review body will look at his case. It might well also take into account any representations that have been made. In those cases in which the local review body decides that it wants to hold a hearing—which I think will be few and far between—it might well take representations on certain matters from people who are not the applicant, such as officials or third parties but, as is the case at present, a third party will not have the right to seek a review of a decision with which they simply disagree. The right to review sits with the applicant.

The Convener: Are there any other questions or points of clarification for the panel?

Mary Mulligan: You just said that you would not expect the applicant to speak at any hearing that was held. Why is that?

John McNairney: At the moment, if someone is aggrieved at a planning decision, they can appeal it and they have a right to be heard, but the 2006 act changed that. Whether an appeal is made to ministers or a review is carried out by the local review body, the future landscape will be that the applicant will be asked how they would like their case to be dealt with, but they will no longer have an automatic right to be heard.

As is likely to be the case with appeals to ministers, the focus will be on a review. It will be for the decision taker, whether that is a reporter, ministers or the local review body, to consider how the case could be examined most effectively. In the majority of cases, that will probably be through written submissions, as happens at the moment, but there might well be circumstances—perhaps when a decision was not taken by an officer within the period—in which the local review body needs more advice or wants to interrogate an issue a bit more carefully. In those circumstances, the regulations provide for a fairly straightforward procedure that will allow the review body to hold a hearing, which amounts to a structured discussion, in which the parties who have an interest in the issues will be able to put forward their views for consideration.

However, the local review process was never intended to be adversarial or to involve cross-examination. Even when appeals are made to ministers, we think that the number of cases in which the more adversarial approach that is adopted in a public inquiry is required will be extremely limited.

Mary Mulligan: I understand that we want to move away from adversarial situations and I appreciate what the minister said about the difficulty of resolving planning issues when there are strongly held views, but I wonder about not involving all the parties, including the applicant. Perhaps that is an issue for another discussion.

John McNairney: I will try to deal with that point. The local review body must meet in public, even if it is considering how a case will be dealt with. In circumstances in which the local review body considered that a hearing was necessary, it would invite the parties that it thought needed to participate to come to the hearing and to make their views known. The regulations allow for that to happen.

David McLetchie: Are we asking about appeals?

The Convener: No. We have drifted a wee bit, but we are not quite at the appeals regulations.

Jim Tolson (Dunfermline West) (LD): We are going into quite a bit of detail, but I want to ask a more general question. When do you envisage that the changes under the 2006 act and the SSIs arising from that act will come into force? What information about the changes will be fed to the officials in the local authorities or planning authorities, to the members of those authorities, and to the public and community councils? What process is envisaged for all that information?

John McNairney: The key provisions on development management will take effect in August. We will revise and publish the circulars at the end of the current parliamentary process. We will then hold forums to promote the changes and discuss issues that practitioners and communities are concerned about. We will make more information available on our website and we have a database containing more than 7,000 contacts to

whom we provide e-alerts of changes to the planning system.

There is therefore a variety of means by which we can support the changes. We will be going out to the authorities and holding more public forums. In the past, at the outset of a change, we might have provided a planning advice note. Planning advice notes will still have a role in planning guidance and advice, but we want to promote a more practical, living form of giving guidance to people. We might well signpost best practice in one part of the country to those in another part who might be interested. We have a range of mechanisms to promote the changes and we will support people through effective guidance.

The Convener: As members have no more questions, are we agreed that the committee wishes to make no recommendation on the regulations?

Members *indicated agreement*.

Town and Country Planning (Appeals) (Scotland) Regulations 2008 (SSI 2008/434)

The Convener: Do members have any points that need clarification on the regulations?

David McLetchie: What volume of appeals do you anticipate, based on previous experience? How many of those are likely to lead to a hearing or an inquiry session? How do you expect the differentiation to be made between a hearing and an inquiry session?

Oonagh Gil (Scottish Government Directorate for Planning and Environmental Appeals): Currently, the directorate for planning and environmental appeals deals with around 1,400 cases per year. Of those, approximately 80 per cent are dealt with through an exchange of written submissions or in writing. The remainder go through some form of oral process.

In recent years, there has been a move towards more informal hearings rather than formal inquiries, with reporters encouraging parties to discuss in a hearing environment the case that is in front of them rather than using formal cross-examination. We have seen a shift towards hearings, particularly for smaller cases, and we expect that trend to continue.

The driver for deciding which process is used for cases under the new regulations will be that the decision maker needs to be clear that they have sufficient information to make the decision. It will be for the appointed person to review the papers that they receive with the appeal and consider what the issues are that will require further examination, and then what the best process will be to get the evidence that will allow them to make the decision.

11:15

We expect to default to the most straightforward procedure, so our initial response would be to gather further information in writing from parties and allow them to comment on each other's papers. A discussion of some issues will help to get to the root of them and get a clearer understanding of the situation. The first step would be to consider a hearing, but certain issues will undoubtedly be best explained and explored through formal cross-examination. In particular, detailed evidence, perhaps on retail impact or consideration of a scientific issue on which there is a clear difference of opinion between expert witnesses, may be best explored through cross-examination, but the main point is that it will be for the appointed person to identify the best way forward, although they will do so informed by the main parties' views on how the issues would best be explored and examined.

David McLetchie: Am I right in thinking that the working assumption is that, if a local authority refuses permission for what is classed as a major development in the hierarchy of applications and the applicant appeals against that refusal, it is more likely than not that consideration of the appeal would be conducted through an inquiry session rather than a hearing session?

Stewart Stevenson: I certainly hope that the balance would be that it could be resolved without a hearing.

David McLetchie: That might be rather optimistic, because in the scenario that I describe a major development, which falls into one of the categories that we discussed under the previous item, has been refused by a local authority. It is therefore almost certainly contrary in some respects to a local planning policy or has raised a considerable amount of local controversy. The likelihood of such an appeal not being considered in a public forum must be minimal.

Oonagh Gil: Under the new regime, the expectation is that even with a major development we will look closely at the case, identify the issues that require examination and consider the best way to take evidence and consider it. It may well be that, for a major development, one part of the scheme is such that an oral process would be beneficial but other aspects that are in dispute may still best be dealt with through written submissions.

David McLetchie: Although it may be wonderful to have such a hearing, we know from our parliamentary experience that the veracity and accuracy of assertions often require to be tested.

We all know from experience of such situations that it is not unknown for people—in all good faith and because of their passionate beliefs about how their community should develop—to make, shall we say, exaggerated or inaccurate statements in the context of the consideration of planning applications. How are such statements to be tested in an environment in which everyone is just sitting around having a cheery little discussion, in the course of which people can make assertions one after the other without any kind of challenge as to whether their assertion is factually accurate or in any way consistent with other assertions that are being made in relation to the application?

Stewart Stevenson: I draw the member back to the process of dealing with the written submissions, when the submissions are put from one party to the other and there is a process by which the assertions are either accepted or rejected and reasons are provided for why that is the case. Mr McLetchie will be familiar with that process, which is a standard part of, for example, house buying, when it is decided what conditions will apply to offers and acceptances. Assertions will not escape unchallenged, however the issues are dealt with—there is a range of ways, which Ms Gil will address.

Oonagh Gil: I would not describe a hearing as a cosy little discussion; they are reporter-led, reporter-managed events, at which the reporter's duty is to set the agenda and lead the discussion. That is to ensure that, at the end of the session, they have sufficient information to come to a conclusion. They are expected to challenge and follow up any arguments if they feel that there is a lack of clarity, or that people are not providing the full picture or are presenting it from a particular viewpoint. Hearing sessions allow for rigorous debate and discussion. As you can imagine, parties in that environment will still wish to disagree with each other, and they are invited to do so. The difference is that there is no formal cross-examination, as would be expected in a formal inquiry.

David McLetchie: We are placing a heavy onus on the reporter, as the conductor of the discussion, to ensure that the assertions are properly tested, that the facts are put and that, if need be, people are challenged on their assertions. Can we be clear that the intention is to have a rigorous system in that respect, rather than one that simply takes at face value all manner of assertions—from whatever sources they might come—that have no foundation in fact?

Oonagh Gil: My colleagues in the directorate are well used to rigorously assessing evidence from a variety of forums. The expectation is that they will continue to do so.

David McLetchie: I am heartened. Thank you.

The Convener: There are no further requests for clarification from members. I invite members to agree that they wish to make no recommendation on the regulations.

Members *indicated agreement.*

Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009 (Draft)

The Convener: Under agenda item 8 we will take evidence from the minister and his officials on the draft Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009. I invite the minister to make some introductory remarks.

Stewart Stevenson: The Planning etc (Scotland) Act 2006 amended the Town and Country Planning (Scotland) Act 1997 to introduce a new planning enforcement power that enables planning authorities to issue a fixed-penalty notice as an alternative to prosecution when a person who has committed a breach of planning control subsequently fails to comply with the requirements of an enforcement notice or breach of condition notice to correct the breach. The purpose of the regulations is to set the levels of such fixed penalties. Effective use of enforcement powers is a key element in ensuring that the planning system operates fairly for all involved.

Mary Mulligan: One frequent complaint about enforcement is that local authorities have not had sufficient enforcement officers to carry out the role. A witness on the proposed national planning framework 2 suggested that we did not have enough planning officers per se—which is particularly important considering the SSI before us. Are you confident that there are sufficient planning officers to enforce the regulations?

Stewart Stevenson: We are adding to existing provisions by allowing an offer to be made to the offender—as we might call them—which that person may accept or reject. The regulations will, I hope, result in a lower burden on officers.

Mary Mulligan: Are you happy that there are sufficient officers to ensure that enforcement is carried out? People often feel that that is where the planning system falls down.

Stewart Stevenson: The employment of planning officers is a matter for local authorities. We are seeking to remove burdens from officers so that they can focus on the things that matter most to people, and the regulations form a part of that process. Other parts of it, which I have referred to previously in committee, include permitted development rights, which will remove a lot of minor issues that currently take up a great deal of planning officers' time. The regulations

must be viewed as part of the provisions in the round—they are a modest part of ensuring that the professional skills of the planning officers will be focused where they can be used to greatest effect.

Bob Doris: What sanctions do local authorities currently have for a breach of planning control?

John McNairney: If there has been a breach of condition, a planning authority may serve a breach of condition notice, about 3,000 of which are served each year. A more serious breach of planning control could be dealt with through an enforcement notice—authorities currently serve about 500 enforcement notices each year.

The notice can be complied with, which is largely the end of the matter, but more commonly it is not complied with and the planning authority is left with the prosecution route. Other tools are open to the planning authority, and in serious cases it may serve a stop notice or take interdict. Generally, however, the main route to resolving breaches is through the enforcement notice. The regulations are intended to provide an additional tool to ensure that planning authorities can address low to moderate breaches through the fixed penalty route—there will still be some breaches that are serious enough for the authority to wish to prosecute.

Bob Doris: I was wondering how many cases go to prosecution. How many come out the other side of the sausage machine with prosecutions secured? Fixed-penalty notices will be of benefit in less serious cases if the burden can be taken off the system. Can you give me some idea of the numbers?

John McNairney: I am sorry—I should have said this earlier. A very small proportion of cases are currently prosecuted: about five to 10 of the 500 enforcement notices find their way to the procurator fiscal each year.

John Wilson: We have been given the figures of 3,000 and 500, but we have not been given figures for stop notices. I do not know whether the Government collects data for the average fine that is imposed on developers but, given the figures that we are talking about and the fines that can be imposed, it would be useful to know the figures for local authorities. Is there uniformity among local authorities for the fines that are imposed? Is it up to each local authority to choose its own methods for determining the levels of fines?

Stewart Stevenson: I do not think that we know the levels of fines that are imposed in practice, but the figures in the regulations come to about a third of the maximum that may be imposed. That is the standard in the legal system—fixed penalties are normally a third of the maximum fine that might otherwise be imposed.

John Wilson: Depending on the size of the development—it can range from a small development concerning an individual householder to larger developments—the concern is whether fixed penalties are sufficient to deter developers as they proceed with a development. I want to test that point, but if we do not have the figures for the fixed penalties that are currently applied, we could review the matter at a later date.

Stewart Stevenson: It might be modestly helpful for me to mention that one further piece of legislation is coming. It relates to the use of temporary stop notices, which are a particularly useful tool in flagrant breaches, and will provide that, without the necessity of going to the court, a stop may be put in place, and the financial clock starts to tick. We have had some slight drafting issues with those provisions, which is why they are not part of today's package, but once they are added to the armoury we will have an effective set of interventions available to us.

The Convener: There being no other questions from the committee, we move to agenda item 9, which is to debate the motion on the regulations.

Motion moved,

That the Local Government and Communities Committee recommends that the draft Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009 be approved.—[*Stewart Stevenson*.]

Motion agreed to.

The Convener: I thank the minister and witnesses for their attendance and their evidence this morning.

We now move to agenda item 10, which we previously agreed would be held in private.

11:30

Meeting continued in private until 11:45.

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