COMMUNITIES COMMITTEE

Wednesday 20 September 2006

Session 2

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COMMUNITIES COMMITTEE
24th Meeting 2006, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Euan Robson (Roxburgh and Berwickshire) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Christine Grahame (South of Scotland) (SNP)
*Patrick Harvie (Glasgow) (Green)
*John Home Robertson (East Lothian) (Lab)
*Tricia Marwick (Mid Scotland and Fife) (SNP)
*Dave Petrie (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)
Donald Gorrie (Central Scotland) (LD)
Johann Lamont (Deputy Minister for Communities)
Alex Neil (Central Scotland) (SNP)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 4

Scottish Parliament

Communities Committee

Wednesday 20 September 2006

[THE CONVENER *opened the meeting at 09:30*]

Item in Private

The Convener (Karen Whitefield): Good morning, everyone. I open the 24th meeting of the Communities Committee in 2006. I remind all those present that mobile phones should be turned off.

Agenda item 1 concerns item 3, which is on the committee's approach to the Schools (Health Promotion and Nutrition) (Scotland) Bill. Members are asked to consider whether to take item 3 in private. Is the committee content with that proposal?

Members *indicated agreement*.

Planning etc (Scotland) Bill: Stage 2

09:31

The Convener: Item 2 is the committee's consideration of amendments to the Planning etc (Scotland) Bill, on day 4 of stage 2.

I am pleased to welcome Alex Neil and Donald Gorrie to the committee, although Donald has been here so often that we probably consider him to be almost a member of the committee. I believe that several other members whose amendments we will consider this morning will attend later in the meeting.

Members should have before them copies of the bill, the marshalled list and the groupings list. I welcome the Deputy Minister for Communities, Johann Lamont, who is accompanied by Scottish Executive officials Tim Barraclough, John McNairney, Alan Cameron, Norman MacLeod and Gregor Clark.

I explain for the benefit of all present that this morning, and for the remainder of stage 2 consideration of the bill, we will use our electronic voting system should there be any divisions on amendments.

It may be helpful for me to remind those present of a few points before we start. First, to speed matters along, if a member does not wish to move their amendment, they should say "Not moved." In that event, any other member can move the amendment at that point, but I will not specifically invite other members to do so. If no other member moves the amendment, I will move to the next amendment on the marshalled list.

Secondly, if a member wishes to withdraw an amendment, I will put the question, "Does anyone object to amendment X being withdrawn?" If any member objects, I will immediately put the question on the amendment.

Finally, if I am required to use my casting vote, I intend to vote for the status quo, which on this occasion is the bill as it stands.

Section 10—Pre-application consultation

The Convener: Amendment 133, in the name of Christine Grahame, is in a group on its own.

Christine Grahame (South of Scotland) (SNP): Amendment 133 is a probing amendment. I have picked up on recommendation 100 of the committee's stage 1 report, which recommends

"that the Executive should consider whether it would be reasonable to reduce the minimum period of 12 weeks which must elapse between the submission of a proposal of application notice and the submission of an application,

with a view to providing more certainty for communities on the form of a development."

The recommendation picked up on the evidence that we received on 1 March 2006. At that meeting, Debbie Harper, of Scottish Power, agreed that pre-application notification was a good idea, as it gave local authorities the opportunity to know what was coming and to allocate resources. However, she was concerned about the period of notice. She stated that 12 weeks was a long period before the submission and suggested 28 days as a compromise. Alasdair Macleod shared her concern about the timescale. He stated:

"In the lead-in to a submission, a project is refined and modified until it is acceptable. If there was a period of 12 weeks before the submission, the community might be concerned that changes had been made."—[*Official Report*, *Communities Committee*, 1 March 2006; c 3200.]

He also recommended a period of 28 days.

I ask the minister to consider those two submissions and our recommendation and give me a response.

I move amendment 133.

The Convener: As no other member wants to speak at this point, I invite the minister to respond.

The Deputy Minister for Communities (Johann Lamont): Amendment 133 relates to applications that require pre-application consultation with local communities and seeks to reduce the minimum period for such consultation from 12 weeks to six weeks. I hear what Christine Grahame has said about uncertainty and suspicion but, through the bill and the broader aims of planning reform, we seek to build greater trust and greater certainty through a plan-led system, so in time the context in which individual applications are dealt with will be different.

Pre-application consultation with local communities on a range of proposals is one of the key elements of modernising planning. It is vital that we ensure that appropriate time is allowed for local communities to engage with such consultation, which should be viewed not as a delay before an application can be made but as an opportunity for applicants to engage with local communities in preparing proposals. Indeed, I hope that prospective applicants will not simply seek local involvement within the statutory 12 weeks but will seek to engage earlier in the preparation of proposals when that is appropriate.

We believe that 12 weeks is the minimum period necessary to allow suitable engagement with communities and we also believe that, in most cases, a 12-week minimum is not unreasonable, given the likely overall preparation time for the types of proposals in question. Therefore, I strongly recommend that amendment 133 be rejected.

Christine Grahame: I thank the minister for her response. I simply wanted something on record that could be reconsidered at a further time. Perhaps Scottish Power and Airtricity will return to us and comment on what the minister had to say. I seek leave to withdraw the amendment.

Amendment 133, by agreement, withdrawn.

Amendment 165 moved—[Donald Gorrie].

The Convener: The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 165 disagreed to.

The Convener: Amendment 134, in the name of Christine Grahame, is grouped with amendments 135, 166, 183 and 184.

Christine Grahame: Amendments 134 and 135 relate to pre-application consultation. In its evidence on whether councils should be involved in pre-application consultation, the Convention of Scottish Local Authorities prevaricated for a bit but eventually came down in favour of councils being involved. COSLA said:

"On balance, however, it is probably best that they are involved. If councils decide to become involved, they need to ensure that they do not take a view on the proposal, and that the public are given proper information on what is acceptable in development terms and on the role of the public in objecting to or supporting an application."—[*Official Report*, *Communities Committee*, 22 March 2006; c 3312.]

That is important because, to the best of my recollection, when we listened to the evidence from community representatives, they felt that they might be hoodwinked—I do not mean to be impolite—deliberately or accidentally if the developers alone were involved in pre-application consultation. However, if somebody from the council—that is, the planning authority—was present, that person could tell the community whether something was appropriate without the council coming to a view, as the application would go through the normal planning process. It is important that somebody from the council should

attend any meetings to hear what is said to the community, to enable the community to trust what it is being told and to keep themselves informed.

Amendment 135 would place an obligation on local authorities to maintain a list of community councils and other bodies within an authority's districts. Personnel can change and, if people or their agents are to get involved in the planning process, we must ensure that, as far as possible, the information on the people who are to be engaged is up to date and they are kept informed, not kept out. Things can get messy in any process if people are not informed and then work has to be undone and started again when they find out later. In this circumstance, I propose a practical and reasonable solution with which I am sure the minister could agree.

I move amendment 134.

Donald Gorrie (Central Scotland) (LD): Amendments 166 and 183 make two different points and I commend them to the committee. Amendment 166 makes a specific proposal about consultation. We have all experienced consultation that consists in part of people misrepresenting other people's views either through ignorance or malice. On at least one occasion during the process, it would be helpful to have meaningful consultation by getting representatives of the developer, the planning authority and the community bodies to sit round a table so that they can all hear from the horse's mouth what the others are saying. That would also ease possible negotiation to improve the application.

In many cases, the local community feels forced to come out against the application when what it really wants is for the application to be improved. If the improvements that the community seeks could be discussed rationally with the input of the councillors' and developers' views, the quality of the application would be improved. There might still be total disagreement on certain points, but at least everyone would know where others stood, which is not the case at present. The suggestion to have such meetings was made to me by several people who are heavily involved in planning. They felt that such a three-cornered meeting would be helpful.

Amendment 183 is another effort to improve the quality of consultation. It suggests that the planning authority should consider the consultation history of the applicant because, although there are some good developers who genuinely consult people and take the process seriously, there are others who do not. The amendment says that where a developer had a good track record of taking consultation seriously, the council would take note of that. Where the reverse was true and the developer had a bad record, the council could impose additional consultation requirements on the prospective applicant. The applicant would have to give a list of its major proposals in the past five years to the planning authority so that the council could check up on its history and consult other planning authorities where the applicant might have been active.

Councils would also have regard to comments from community councils or other bodies. If the community bodies were to say, "Messrs X are very good at consultation and we get on very well with them," the applicants would be regarded more favourably by the planning authority. The amendment is an effort to put some pressure on developers to take consultation seriously because their past record would be taken into account, which might impose additional requirements on them.

I hope that the two suggestions in amendments 166 and 183 will appeal to the committee. The Executive is making genuine efforts to improve pre-application consultation, but my amendments would strengthen its well-intentioned bill.

09:45

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The proposals in the bill concerning pre-application consultation between applicants and stakeholders relate to specified classes of developers but not to general pre-application discussions. The purpose of amendment 184 is to introduce a statutory duty for planning authorities to engage in pre-application discussion about any class of application.

At present, the practice that is adopted by local authorities across Scotland varies. Some recognise that engagement with developers is an essential part of the service that they provide and are already engaged in discussions with them, and some think that it would be a drain on scarce resources and would not engage at all in such a service. The effect of amendment 184 would be to give local authorities a role in engaging in their own right with developers and put that into practice. Pre-application discussions should be beyond doubt; we all agree that they are an essential part of the service and are consistent with the culture change that we are trying to achieve through the bill. Amendment 184 would give a greater power for that to happen.

Scott Barrie (Dunfermline West) (Lab): All the amendments are trying to do similar things, but I am not sure that they would achieve what they set out to do. Amendment 134 seems to be unduly bureaucratic in putting in extra hurdles that would be grossly unhelpful. For example, when we were taking evidence, we heard a lot from local authorities about the problems with the recruitment and retention of adequately qualified staff. It would

be a gross waste of planning officials' time to make it mandatory for them to attend preconsultation meetings as some sort of impartial broker who has to take a Trappist vow of silence and cannot do anything at the meetings. It would do nothing to make their jobs more satisfactory or to encourage adequately qualified people to come into local authorities. By agreeing to amendment 134, we might find that we create a further problem for the image of local authority planners and what we expect them to do. We would be doing the planning community a gross disservice by insisting on it. It is not advantageous for anyone to have to attend a meeting just to make sure that what is being said is correct without being allowed to comment on the material aspects of any proposed application. It would be a complete waste of their time.

Euan Robson (Roxburgh and Berwickshire) (LD): I will be interested to hear the minister's comments on amendment 183, which has a point about applicants who fail to engage adequately or in the correct spirit in the pre-application process. It is clear that there might be ways to get round the provisions of the amendment. For example, a company might have various different forms—it might have one legal identity for one application and another for the second, and so on. However, if organisations do not act in the spirit of the legislation, there should be some way in which the local authority could draw them more effectively into the process to ensure a greater degree of co-operation. I am not sure that amendment 183 in its current form would achieve that, although it does have a point on which I will be interested to hear the minister's views.

Johann Lamont: Amendment 134, in the name of Christine Grahame, seeks to have planning authority representation involved in any and all meetings between prospective applicants and members of the public during pre-application consultation. Although it might be appropriate to have such representation at larger-scale or particularly significant meetings, I do not believe that it would be appropriate to legislate in the bill for the authority to attend every meeting, partly for the reasons that have been raised. If an authority had to attend everything from one-to-one discussions with individuals to meetings with groups, public meetings and site visits, that would unduly tie up planning authority resources. Also, it would not necessarily achieve what I think Christine Grahame wants it to, which is to give people more confidence that all the discussions were taking place in a way that they could accept. In some circumstances, people would not see the planning authority's presence as being helpful to them—that is the reality of how people feel. There is logic in the proposal that the authority should be represented at meetings, but we would have to think about the wisdom of legislating for it to be represented at every meeting.

Once applications and accompanying reports on pre-application consultations are submitted, members of the public will have an opportunity to see to what extent the proposals and the report reflect their views. If those documents fail to reflect the views of the public, or fail to provide a reasonable explanation for not doing so, it is open to concerned groups or individuals to object, and I presume that they would do so. I therefore recommend that amendment 134 be rejected.

Amendment 135, also in the name of Christine Grahame, would require planning authorities to keep a list of local details of bodies that may be specified in regulations as consultees for pre-application consultation. I believe that such information should indeed be available and that the list should include those local bodies and persons whom the planning authority may recommend for consultation in addition to those required by regulations to be consulted. However, I also believe that the most suitable place to spell out what is appropriate in terms of the form, content and availability of such information is in guidance. That will allow us and the planning authorities to take a more flexible approach to developing information, so as to best reflect local circumstances while providing a degree of consistency for developers. There are other ways of providing that information that may be more useful. I therefore recommend that amendment 135 be rejected.

Amendment 166, in the name of Donald Gorrie, seeks a minimum requirement for a meeting between prospective applicants, the planning authority and representatives of local community bodies as part of a pre-application consultation. It also seeks to define what constitutes a local community body. Section 10 will introduce provisions allowing us to specify in regulation who should be consulted in pre-application consultations and the form that such consultations should take. In addition, it introduces provisions to allow planning authorities to specify additional consultees and forms of consultation in the light of local circumstances.

Again, I believe that the best place to set out consultation requirements of that sort is in secondary legislation and related guidance. That also allows authorities to fine-tune such requirements to meet local needs. To try to do that in the bill is to risk introducing requirements that are inappropriate to communities or to specific developments. There is also a risk that, in trying to define at this level what the interests of local bodies might be, we might end up with something that is rather vague and difficult to implement and which might exclude parties with a relevant

interest. However, I emphasise that we are keen for there to be honest and positive engagement among all those interested at local level. It is just a question of how we can ensure that that happens, as opposed to saying that three-cornered meetings have no purpose whatsoever. I therefore recommend that amendment 166 be rejected.

Amendment 183, also in the name of Donald Gorrie, seeks to require planning authorities to consider the past performance of a prospective applicant in relation to consultation and planning applications before deciding who should be subject to pre-application consultation in a subsequent application. It would allow a planning authority to obtain such information from planning authorities, community councils and other local bodies. As far as pre-application consultation is concerned, what is relevant is who locally will have an interest in the proposed development, not who was or was not effectively consulted in previous applications, although I recognise what Donald Gorrie and Euan Robson have said about people not taking consultations seriously. We think that our proposals provide a more effective way of concentrating people's minds.

It will be for the planning authority to determine, on submission of the application and the report on the pre-application consultation, whether the new provisions on such consultations were complied with. If the authority concludes that the applicant did not comply, it must decline to determine the application, regardless of past history. If someone has not consulted effectively, there are consequences. I would argue that that in itself should change the general approach to consultation. I hope that that reassurance and recognition of the points that have been made will persuade members to reject amendment 183.

Amendment 184, in the name of Cathie Craigie, seeks to allow prospective applicants to demand information from planning authorities on a range of planning documents prior to submitting an application. That may appear to go beyond simply providing the documents themselves. To a large extent, the Freedom of Information (Scotland) Act 2002 allows prospective applicants to obtain information from planning authorities on various planning documents, and we would not want to cut across those legislative requirements. It is open to planning authorities to engage in pre-application discussions about the interpretation of such documents on request in a specific case, but we do not intend to put such requirements on a statutory footing. Planning authorities will be able to decide where they can best allocate resources to pre-application discussions. Having an across-the-board requirement could lead to a dilution of the guidance that they are able to give. It is about making a judgment on where the process can best be used. I ask Cathie Craigie not to move amendment 184. If it is moved, I recommend that it be rejected.

Christine Grahame: I thank the minister for her comments. I will seek leave to withdraw amendment 134, as I intend to come back with a tighter redraft at stage 3. I accept the point that Scott Barrie made. I make plain that by

"a representative of the planning authority"

I meant an elected representative. That is one part of the amendment that I will tweak. I take on board the comment that was made about requiring a representative to attend each consultation meeting, but I think that there is merit in returning to the issue, especially because COSLA has come down in favour of that. I heard what the minister said about including these provisions in guidance rather than legislation and will reflect on that point when we come to consider stage 3 amendments.

I was attracted by the amendments in the name of Donald Gorrie, as they seek to achieve much the same thing as my amendments. However, I should have expressed concern earlier about amendment 183, which requires the planning authority

"to have regard to any previous record of the prospective applicant".

I do not think that it is appropriate to enshrine such a provision in statute. When applicants with a bad track record come before local and planning authorities, the authorities will take that into account anyway. Enshrining the provision in statute, rather than proceeding more subtly, might create difficulties with litigation.

Amendment 134, by agreement, withdrawn.

Amendment 135 not moved.

Amendment 166 moved—[Donald Gorrie].

The Convener: The question is, that amendment 166 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Home Robertson, John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 166 disagreed to.

Amendment 183 moved—[Donald Gorrie].

The Convener: The question is, that amendment 183 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
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Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 183 disagreed to.

Amendment 167 moved—[Donald Gorrie].

The Convener: The question is, that amendment 167 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Home Robertson, John (East Lothian) (Lab)
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Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 167 disagreed to.

10:00

The Convener: Amendment 168, in the name of Donald Gorrie, is grouped with amendment 171.

Donald Gorrie: Amendment 168 is linked to amendment 171, which can be found on page 7 of the marshalled list. The amendments are another endeavour to strengthen a particular aspect of the pre-application consultation.

Amendment 168 would ask for the community bodies involved to report to the planning authority on whether the quantity and quality of the public consultation were adequate and whether they thought that the prospective applicant took it seriously and had a satisfactory attitude. The report would cover the improvements that had been made to the development as a result of the consultation process—the upside of the exercise. The community bodies would also report any significant concerns that they still had about the development and, finally, give their advice to the planning authority about whether the application should be granted, granted subject to conditions, or refused.

The report by the community bodies would cover a number of aspects: whether the consultation had been satisfactory; the positive and negative outcomes, including any improvements wanted by the community; and the community bodies' advice to the council about how they should deal with the application. Obviously, that would be only advice, and it would still be up to the planning authority to decide on the outcome.

Amendment 171 deals with the process from the planning authority's point of view. The authority would have to consider any report that was submitted by communities in that way and, if it was not satisfied in the light of the report that the consultation had been good enough, it could inform the developer that more consultation was needed along specific lines to cover the gaps that the community had identified.

Amendments 168 and 171 go together and are another serious attempt to make it clear that consultation and communities must be taken seriously. Despite the bill's good intentions, many communities do not think that they are taken seriously. That includes community councils in some areas and other community groups, so the community voice is not being heard. Amendments 168 and 171 would confirm that communities would be taken seriously and would have a real voice in planning issues.

I move amendment 168.

Dave Petrie (Highlands and Islands) (Con): I want to clarify one point. Are the community bodies statutory consultees, and if so, would they not already have the opportunity to report?

Scott Barrie: I have some sympathy with what Donald Gorrie is saying, because it is crucial that communities are properly engaged and involved in the pre-application period. However, I wonder whether the proposals, particularly in amendment 168, are the right way to do that. What would the report look like and how would it engage with the planning committee? Would it not just be a duplication of the community's objections to the application?

Donald Gorrie's points about ensuring that communities are properly engaged are crucial. We have to get that right, which is why I have some sympathy with the amendments, but it could just be that we would hear the communities' objections twice. What would the difference be between the

objections and the report?

Cathie Craigie: I, too, find myself sympathising with amendment 168, and I am interested in hearing the minister's response to Donald Gorrie. We want communities to be involved in the pre-application process; I understand that the bill will give local authorities the power not to make a determination on an application if the proper pre-application consultation processes have not been followed. What the minister says will be crucial in deciding whether we go for Donald Gorrie's amendments.

Christine Grahame: I, too, am sympathetic to amendment 168, but I am trying to think of how difficult the practicalities might be. I know that the power would be discretionary, but I can think of times when community bodies in areas that I represent have taken different views—for example, the community council's view might be different from that of the local development trust and a campaigning group. When a town is split over an issue, such as where a big supermarket, school or leisure centre should be located, how practical would it be to draft a report to represent such views? There might be unanimity in some circumstances, but the situation would be difficult when communities were split over developments. It is difficult to know what authority a report would have. Would minority comments be included? The issue is difficult. I am sympathetic to amendment 168, but I am concerned about its workings.

Tricia Marwick (Mid Scotland and Fife) (SNP): Like other members, I am sympathetic to, but have some problems with, Donald Gorrie's amendments. As Scott Barrie said, a rerun of an objection is not required. Guidance would need to lay down clearly that the concern was the process. I have some sympathy with amendment 168 because, if the local authority were considering whether the consultation had been sufficient, as it is required to do, the concern is that it would undertake a tick-box exercise that meant that if this, that and the next thing had been done, the consultation would be regarded as sufficient. People who had been consulted might have different views.

I would like Donald Gorrie to produce amendments that made it clear that we are talking about the consultation process rather than a rerun of objections. The amendments would be stronger for that.

Patrick Harvie (Glasgow) (Green): I echo that. Cathie Craigie made the case for amendment 168, as she noted that the bill will give planning authorities powers to use if they consider that consultation has not been adequate. The thrust of amendment 168 is that the view from the other side of the fence is equally important. We have all agreed that we want innovation, creativity and thought to go into how consultation and public participation are handled. As well as taking the opportunity to nip their councillor's ear the next time that they saw them, people could give formal feedback to the system about how they felt the process had gone. In the long run, that would be extremely beneficial to anyone who was genuinely trying to be creative and innovative about improving their practices on the ground.

Euan Robson: I, too, have sympathy with the amendments.

John Home Robertson (East Lothian) (Lab): Tea and sympathy.

Euan Robson: Yes. I have one reservation about amendment 168. It says:

"A report … may … indicate the views of the community bodies … as to whether any application … should be—

(i) granted,

(ii) granted subject to conditions, or

(iii) refused",

which might focus attention at the wrong end of the process. If the amendment is designed to assess whether the consultation and involvement were adequate, to allow community bodies to consider the decision on an application might fail to achieve the purpose of the earlier part of the process. It would be interesting to know whether the amendment could be redrafted and whether Donald Gorrie might withdraw it and have another look at it.

Johann Lamont: I am rather spooked by the fact that I scribbled down the phrase "Not tick box" just before Tricia Marwick made her comment about tick-box exercises.

Pre-application consultation and other elements of community engagement require the public's genuine engagement. On the one hand, a community organisation should not go into such consultation determined simply to find loopholes or other ways of objecting; on the other hand, developers should not think that all they have to do to get to the next stage is simply to prove that they have spoken to the community. The draft planning advice note on community engagement sets out some imaginative and creative ways of undertaking such consultation.

We do not want a hugely overformalised procedure that centres only on arguments about an application and does not capture people's feeling that such things can be fixed. Moreover, we should draw a distinction between pre-application consultation and consultation on the application. The fact that the community will be involved at this very early stage does not mean that the next stage of the process will not also be important. I am concerned that amendment 168

seeks to formalise a process that would take place anyway.

There is nothing to prevent community bodies or individuals from making their views on the quality of the pre-application consultation known to the planning authority. Indeed, I would like to see what would happen if someone tried to stop the people in my constituency making those views known. After all, that is the point in the process at which community campaigns against, or debate over, specific applications arise, and I do not think that such activity should be put into particular boxes.

I point out to Patrick Harvie that nipping the ear of one's councillor is a very important part of the democratic process. Communities must see their locally elected representative as someone who represents their area and who therefore has the responsibility to respond to people's views. In any active democracy, that relationship is critical and certainly not passive.

Pre-application consultation should not be seen as replacing the publicity and consultation surrounding the application itself. After all, public involvement does not stop with the pre-application consultation. Once an application has been made, publicity and consultation procedures come into effect and interested parties should make their views known and continue to see the application through to the end. I therefore recommend that the committee should not support amendment 168.

Amendment 171 seeks to require authorities to evaluate the reports of pre-application consultation and to request that further consultation be undertaken before they make a decision on a relevant application. To some extent, that takes us back to comments on an earlier amendment.

Section 10 allows planning authorities to specify who should be consulted locally in the pre-application consultation phase and section 14 introduces a requirement for planning authorities to decline to determine applications that have not complied as necessary with the provisions on pre-application consultation. That makes it clear that the earlier stage is not a tick-box exercise; if a community is unhappy with an application, the quality of the pre-application consultation will play a part in the planning authority's decision about the application in question. Indeed, such a measure should concentrate minds. Consideration of the report of the pre-application consultation will play a key part in all this.

I do not believe that we should extend the requirements for pre-application discussion into the consideration of the application itself. At that stage, the proper publicity and consultation procedures for applications will take effect. Planning authorities have—and will continue to have—powers to require applicants to supply further information on their application before a decision is reached. That said, applicants are entitled to know what is required of them and, having been required to do it, should expect their application to be processed. We would not seek to do anything to encourage planning authorities to defer the consideration of who, locally, should be consulted on a proposal.

I therefore recommend that amendment 171 should also be rejected.

10:15

Donald Gorrie: I thank committee members for taking seriously the issue that I have raised and for responding constructively.

The process that is set out in amendment 168 would not have to happen on every occasion; instead, the amendment makes it clear that

"local community bodies may … prepare … a report on the pre-application consultation"

if an issue should arise. For example, if several community bodies disagreed about the quality of the consultation, they could produce either a number of reports reflecting the different views or a single report that made it clear that certain groups wanted A and certain groups wanted B. I do not think that any difference of opinion among community bodies would be an insuperable obstacle and the process that is set out in amendment 168 fairly reflects that.

The minister said that what is proposed will happen anyway. It might, but no one has to pay any attention to it. With due respect, I find the argument that councils will always do everything correctly extraordinary. We all know that councils, like Parliaments and political parties, vary in quality. Some do certain things well and some do them badly. One might as well argue that we do not need a law against murder because only 0.001 per cent of people in the country wander about murdering people. We must legislate to try to bring up to the mark on this issue the minority of councils that are not there.

The issue of duplication of objections has been raised. As I see it, when an application is made, community bodies will submit their response and indicate that they do not like A, B and C. The proposed report will be produced after all the meetings and negotiations that we hope will take place. It will not duplicate what the bodies sent in initially, but will set out their considered view in the light of consultation. The provision in proposed new subsection (4)(b) that would allow community bodies to recommend that an application be granted, refused or granted subject to conditions follows on logically from that process. Bodies would set out their remaining concerns and make it clear to the council whether they were prepared

to accept an application subject to conditions or whether they were unwilling to accept it at all.

The purpose of amendment 168 is to ensure that there is a study of the consultation process. As all members have made clear, it is important that we engage communities in that process. It may be possible to write a better amendment, but it would be helpful to communities if their right to submit a report were included in the bill. It would enable them to respond along those lines if they were unhappy with the way in which the council had dealt with one or more applications. The provision is worth while, so I will press amendment 168.

The Convener: The question is, that amendment 168 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 3.

Amendment 168 disagreed to.

Amendment 184 not moved.

Section 10 agreed to.

Section 11—Public availability of information as to how planning applications have been dealt with

The Convener: Amendment 131, in the name of Alex Neil, is in a group on its own.

Alex Neil (Central Scotland) (SNP): The purpose of amendment 131 is to ensure that there is a verbatim record of the meeting at which the planning committee takes decisions on a planning application. The amendment is designed to close a loophole in the present law, which was highlighted by a recent case in Lanarkshire.

During the planning committee's consideration of the application concerned, the written report from officials was supplemented heavily by verbal input and additional advice to the committee. Those who opposed the application disputed the veracity of the verbal advice that was provided. An appeal went to the minister, and when it was pointed out that the additional information and advice that was provided at the planning committee meeting had been erroneous—that fact has subsequently been confirmed by two of the statutory consultees—the minister could not act because there was no record. In one case, there was a dispute about what was said and nobody had a record. The minutes of a meeting record merely the people who speak; they are not a verbatim record of what is said.

Amendment 131 would ensure that a verbatim record of planning meetings was kept, so that any verbal information that supplemented or contradicted the written information provided and any additional advice from officials or others would be recorded in the same way as written advice is recorded as part of the planning application process. If we are going to have an effective appeals system, the loophole must be closed. Whether the appeal is made through the courts or to the minister, people should have ready access to a true and correct record of what was said at meetings. That record should be available to those who are making the decision on the appeal.

That is the purpose of this straightforward and simple amendment. There should be a verbatim record, so that no dispute about what was said can arise because there would be a true and correct record of what was said at meetings.

I move amendment 131.

Tricia Marwick: I agree strongly with Alex Neil's amendment 131. There is a loophole that needs to be closed.

The minister will probably say that it is a question of resources, but that is true of the whole bill and we have not been convinced that the Executive has put sufficient resources in place. If we want an open and transparent system, we need to ensure that everybody has access to the same, correct information, so that no dispute can arise about what was said by whom and when, and what advice was given.

In the case that Alex Neil highlighted, it would be unthinkable to ask a minister or anybody else to make a judgment based on what somebody said that somebody had said, rather than on a record. Parliament is well used to having an almost verbatim record of proceedings, and there is no reason why we do not have a similar record for issues as important as planning.

Cathie Craigie: I do not support amendment 131. I do not know about the application in Lanarkshire that Alex Neil referred to, but I presume that it was not from North Lanarkshire.

Alex Neil: It was South Lanarkshire.

Cathie Craigie: Having been a member of a local authority planning committee, I think that the

processes that we have worked towards over the years have improved transparency and access for members of the public. I do not know of any local authority that would not conduct its consideration of applications in public. The public have access to all the material that is before committee members and to the planning meetings. The bill aims to ensure greater transparency.

Everything that we do in life boils down to resources in one way or another. We have to make judgments about where public money will be spent, and the planning system is no different. In local authorities, planning departments are vying against social work departments for their share of resources. I do not think that we can give planning departments a blank cheque. Providing a verbatim report would be resource intensive, and I am sure that if we started ensuring that local authority planning committees had verbatim reports, we would soon be suggesting that all committees should have verbatim reports.

The bill provides enough checks and balances to allow information to be made available to the public. Amendment 131 would just add another bureaucratic and time-intensive provision; I do not accept that it is necessary, nor that it would make the planning authority any more transparent than it already has to be.

Patrick Harvie: I support amendment 131 and I am not convinced that we are talking about vast resources. The proposed operation would not be on the scale of the Parliament's official report, because we are talking about having a record of certain meetings only. If the committee rejects the amendment, perhaps Alex Neil might lodge an amendment at stage 3 to suggest that, at the bare minimum, an audio or video recording—which would cost virtually nothing to produce and make available—might be another way of achieving the same objective.

Johann Lamont: Amendment 131 would add to section 11 a requirement for verbatim records of local authority proceedings on planning applications to be kept and for them to be kept on the planning register.

Section 11 allows us to specify in subordinate legislation that a report on each planning application be kept in the planning register. Such a report would include a description of the proposal, reference to relevant development plan policies, the issues that consultees and objectors raised, the planning authority's decisions, any conditions and the authority's reasons for the decision. The aim is to improve transparency by having a clear and accessible explanation of the decision that is taken on every planning application.

Although it is possible to push for more and more detail on every application, a balance needs to be struck between producing a reasonable amount of information on each case and adding undue burdens on planning authorities. There is an issue with resources, but the challenge is not simply whether there are sufficient resources but how to deploy them effectively, regardless of the size of the pot. If there is to be an increase in the budget, we discuss how those extra resources would most benefit the community and there are strong arguments for targeting them at enforcement, e-planning and involving people at an earlier stage.

We need to test the effectiveness of a proposed use of resources. Patrick Harvie said that Alex Neil's amendment 131 would not apply to that many meetings, but it would cover

"any proceedings … in relation to the application",

and I contend that that would be a significant change. If individuals wish to pursue concerns in particular cases, they have powerful tools at their disposal under the freedom of information legislation, which allows them to obtain more information from local authorities, including minutes of committees. Therefore, a requirement for verbatim records to be made and kept of all proceedings in relation to a planning application would place too great a bureaucratic burden on planning authorities. We agree that we need greater transparency in decision making, but a word-by-word account of every planning meeting would not be a proportionate measure. Therefore, I recommend that the committee should reject amendment 131.

Alex Neil: I will press amendment 131, because the minister has not addressed the issue at all. In the example that I gave, the council was giving planning approval to its own application. It is clear that a dispute arose with the appellants over what was said and what advice was given, but there was no recourse for the appellants. The minister's response—or the civil service response—does not deal with the point that has been raised, which is a substantive democratic point: if the public are to have confidence in the planning system and in the quality of appeal procedures, additional information and advice on a decision must not be the subject of dispute about what was said but must be on the record of what was said.

Patrick Harvie made a reasonable suggestion that the record could be audiovisual. I think that amendment 131 would allow that, because it does not say that the record must be written but simply talks about a verbatim record.

I found some of the minister's comments bizarre. If somebody phones a planning officer in any planning authority, the officer will record the detail of that phone call. They have to do that to protect themselves.

Cathie Craigie's point about resources was spurious. The resources that would be required to implement the amendment would be minimal, especially when balanced against the democratic issue of ensuring balance, fairness and justice.

Not to vote for amendment 131 would be not to acknowledge that there is a loophole in the law that needs to be addressed. I hope that committee members will give serious consideration to agreeing the amendment because, if we are to try to convince the public that planning decisions are being taken fairly and squarely, we need to eliminate any possibility of bad or contradictory advice being given without a true and correct record being kept of what is said. I strongly recommend that amendment 131 be agreed to and I would be extremely disappointed in the committee if it turned it down.

The Convener: The question is, that amendment 131 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 131 disagreed to.

Section 11 agreed to.

The Convener: I suspend the meeting for five minutes.

10:31

Meeting suspended.

10:37

On resuming—

Section 12—Keeping and publication of lists of applications

The Convener: Amendment 136, in the name of Christine Grahame, is in a group on its own.

Christine Grahame: I was a bit surprised that new section 36A, which section 12 proposes to insert into the Town and Country Planning (Scotland) Act 1997, provides that the publication of lists of applications by electronic means is to be discretionary. A fuddy-duddy like me uses electronic means all the time and most, if not all, councils have websites on which they publish all kinds of information. Not only would the online publication of such revised lists make them more accessible to the public, but the public would expect to find such information on council websites. That would allow lists to be updated daily, if not hourly, and people would know where they were.

Publication by electronic means would be cheaper for councils—I do not know how else they would publish the information—and would provide uniformity across all councils. As proposed new section 36A stands, local authorities may publish their applications lists by electronic means, but that might mean that one local authority would use electronic means and another would not. I do not want to make a meal of it, but it should be mandatory for local authorities to publish their lists by electronic means.

I move amendment 136.

Johann Lamont: Amendment 136 aims to require the publication of planning authority lists of applications and related information to include electronic publication. Use of electronic communication and the internet in planning, wherever appropriate, is our aim. A recent survey of planning websites showed that planning authorities already place weekly lists of planning applications online, as Christine Grahame said.

We have done considerable work on e-enabling the planning system. We announced in August a £12 million investment in e-planning, which will drive forward efficiency savings in the planning system and ensure increased online access to planning information. We know that that is the way forward, and through working with local authorities we have secured significant funding with which to make progress.

Our approach is about helping planning authorities to meet complex challenges rather than trying to force them through statutory requirements. I know that Donald Gorrie thinks that I have too much faith in all planning authorities, but that is not the case. However, were we to introduce such a statutory requirement at this stage, it could mean making changes to software, which would take time, and we might be doomed to fail.

We are all pushing in the same direction on the matter and there is no indication that planning authorities are resisting. Therefore, we need to make a judgment about whether to place such a provision in the bill at this stage.

The important point is to ensure that weekly lists are available and are kept up to date with the new

information that we propose, and that that is done on time by using the most modern technology. Putting the new lists online will happen inevitably as a result of planning authority capacity building in e-planning. I therefore recommend rejection of amendment 136.

The Convener: I invite Christine Grahame to wind up and indicate whether she plans to press or withdraw amendment 136.

Christine Grahame: I will certainly press amendment 136. Proposed new section 36A would require weekly lists to be published, but where? How would people know where to find them? The minister gave no indication of how interested parties would access the lists. In fact, the proposed new section states that lists are to be published not weekly but

"at such intervals as may be so prescribed".

The only time that the word "publish" appears in proposed new section 36A is where it says:

"to publish that revised list".

All that I ask to be published electronically is the revised list of applications, not all the conditions or the other additional information. I cannot see that incredible software is required to do that. I presume that the planning authorities keep the lists of applications electronically in a database, where they revise them before transferring them into the public domain. My amendment 136 is about keeping the public engaged and aware of what is going on. Leaving the decision to publish the lists electronically to the discretion of local authorities is simply not good enough.

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 136 disagreed to.

Section 12 agreed to.

Before section 13

The Convener: Amendment 123, in the name of Donald Gorrie, is grouped with amendments 122 and 189.

Donald Gorrie: Amendments 123 and 122 both deal with aspects of health. According to our procedural system, amendment 124, which covers the same area, was debated last week but has not yet been voted on.

Amendment 123 is the first and most general amendment, in which I suggest that the

"public health and the health of any individual likely to be affected"

should be material considerations when granting planning permission.

Before members had the pleasure of Euan Robson's presence and my disappearance, the committee dealt with concerns from people who feel strongly that phone masts and suchlike are a risk to people's health. Setting aside the argument about whether that is scientifically correct, that is believed by a lot of people and it might be correct. We were not allowed to deal with that matter as a planning issue because, as planning laws stand, health is not a material consideration, but I think that it should be. There must be many other areas—opencast mining and parts of the chemical industry, for example—where health should be considered when deciding whether to grant planning permission. I suggest that the health of the public should be a material consideration. I am not saying that it should be the ruling consideration, but it should be a material consideration that a planning committee must take seriously.

10:45

The other issue that we debated before concerns the planning system encouraging energy conservation and microrenewable measures. The latter part of amendment 122 deals with the environment and health. If people have good energy conservation and heating arrangements for their houses, they are likely to be healthier.

Amendment 122 says that, instead of councils starting—as at present—from the position of being against energy conservation measures or microrenewables in areas where councils think that they might not fit into the landscape, they should start from the position that such measures are desirable. When a strong argument is made against a development, a council can decide against it, but it should start from the proposition that such measures are good and are to be encouraged, rather than discouraged. In Edinburgh, an application for a solar panel that will be seen only by a passing seagull will be turned down. That is planning carried to absurdity. If we are serious about energy conservation, we should encourage people.

Amendment 123 deals with public health. Amendment 124 deals separately with microrenewables—members will not debate it today but will vote on it. In due course, I will not move amendment 122, but I hope that amendments 123 and 124 will win their votes. By the law of averages, I am bound to get an amendment through sooner or later.

I move amendment 123.

The Convener: We all live in hope, Mr Gorrie.

Christine Grahame: I am sympathetic to Donald Gorrie's arguments, particularly about amendment 123. I note his position on amendment 122, with which I also have sympathy. In my amendment 189, I adopt many of the arguments and examples that he gave in speaking to his amendment 123, which is on health conditions.

I will take a different example in relation to my amendment 189. Nowadays, we often find that in residential areas single plots, parts of houses' land or green spaces in the middle of where people live are being sold and are having developments put on them, which brings lorries and dust to people's doors. The people who live in such areas have little redress, except to try to negotiate with the contractor once a plan is in place.

Some effects can be foreseen. The dust from a building site is blowing over a Borders village, where windows and the insides of houses are being coated every day. People in that village will have to live with that development for a considerable period. Individuals there negotiated with the developer, but after the deed was done. All the consequences were foreseeable. In granting planning permission, mandatory steps to protect the existing community should have been specified. That development affects

"the health of persons residing"

in that area, who include children and babies. Dust goes into houses and clothing becomes filthy from the dust that is blowing about.

Provision should be made to protect communities, particularly when a development is to be close to an existing community or is slap-bang in the middle of it. A building site can appear on green space that people had no idea would be developed.

John Home Robertson: This group of amendments seems rather broad—it deals with health, microrenewables and different matters.

The idea of Donald Gorrie disappearing appeals to me, but he seems to have come back to haunt us.

The Convener: That is unkind, John.

John Home Robertson: Sorry. He has come back to haunt us and he is raising perfectly fair points that need to be debated.

On microrenewables, I agree that some local authorities are adopting an absurd position in relation to solar panels. We should urge planning authorities to be more sympathetic towards such development although, at the end of the day, it is up to them to take the decision—I am sure that we all respect local authorities as far as that is concerned.

On Christine Grahame's point about dust from developments for which consent has been granted, surely it is incumbent on local authorities to impose environmental and other conditions on developments that can give rise to that kind of problem and it is for the Scottish Environment Protection Agency or local authorities to enforce such conditions. If a developer is carrying out an activity that gives rise to noise or dust or whatever else that could have an impact on people's lives, and in particular on their health, it must be subject to other controls and those controls ought to be enforced.

On the health implications, as Donald Gorrie said we have had the debate before. It is difficult to prove a negative and that something is absolutely safe. Let us face it, when the wheel was invented—that predates even Donald Gorrie and me—somebody could quite rightly have said, "This is dangerous. It's going to kill people, therefore we shouldn't have wheeled vehicles or roads." It would be a recipe for doing nothing if we had to demonstrate that everything was absolutely safe.

We have all heard concerns being expressed about, for example, mobile phone masts and mobile phones. I am not sure that it is fair to ask planners to deal with that. Surely that is the responsibility of the health authorities, which are concerned that any technology that has an adverse effect on people's health and safety should not go anywhere near the planning stage and should be banned under health regulations. In a previous debate, when I tried to persuade the committee that hedges were a development and should be subject to planning control, the planners said that that was inappropriate. I suggest that it is equally difficult to ask professional planners to make judgments about the health implications of different technologies. That should be the responsibility of the Health and Safety Executive and health authorities, which should, in effect, have a veto on developments that have an adverse effect on people's health. For that reason, I have my doubts about amendment 123.

Patrick Harvie: John Home Robertson's contribution was a bit of an overreaction. Over the course of our consideration of planning, we have head compelling arguments in favour of somehow building health into the system. There may be

scope in future to consider ideas such as health impact assessments. They may not necessarily be ready to be put into practice in the bill, but including an amendment such as amendment 123 would be a simple way of allowing planning authorities to bear the issue in mind. It would not be prohibitive. I do not think, for example, that campaigners against mobile phone masts would see it as the solution to all of their concerns. Amendment 123 refers to

"the health of any individual likely to be affected".

Campaigners would need to demonstrate that an individual's health was likely to be affected which, at the moment, they could not do, because the jury is out on the issue.

Amendment 123 would not mean, as John Home Robertson suggests, that planning authorities would need to make health judgments when evidence is uncertain. It would allow public health to be one of the issues that planning authorities consider. It would not result in us banning everything that has any kind of health impact. Most developments have some kind of health impact. Public health is, to a large extent, a function of the environment around us. Planning decisions will impact on health. We should bear the health impact in mind when we are deciding whether to go ahead with a particular development or, as under another part of the bill, whether to approve a development plan. We should consider the health impact on the population as a whole as well as on local individuals who are likely to be affected by specific developments. There is a strong case for amendments 123 and 122.

I welcome any attempt to raise the issue of microrenewables again. It is being considered in a number of arenas, as the Executive is considering it through work on permitted development rights and back-bench members are examining it through member's bill proposals. It is welcome that Donald Gorrie's amendment 122 ratchets up the issue by talking about undesirability. It does not just state that planning authorities should look kindly on certain applications; it refers to the undesirability of granting planning permission except when energy issues have been considered.

At the moment, we are allowing to be built the building equivalent of the gas-guzzling Chelsea tractor. We should not be doing that. It should be a natural and unquestionable concept that when something is built its energy requirements should be covered, including energy efficiency and its ability to generate its own electricity.

I welcome the amendments, which would not lead to the situation about which John Home Robertson warned us.

Euan Robson: I have considerable sympathy for amendment 123. I am not quite sure whether it is too tightly drawn, and I am interested to hear the minister's view on whether the phrase "health of any individual" would be a major extension of policy or could be read as being encompassed in the idea of public health.

Christine Grahame gave an example from my constituency. I do not think that the point is that the issue—dust blowing across an adjacent housing estate—was discovered only after planning permission had been granted, because the local name for the area is sandpit field. It should have been understood that an issue was likely to occur when the building work commenced. In fact, if the provisions in amendment 123 had been in force and public health had been a material consideration, that might have influenced the direction of the planning application or allowed the imposition of a group of conditions that would have prevented the subsequent difficulties, which are all too obvious to those who have seen the effects first hand.

An interesting and additional dimension could be incorporated into the bill through amendment 123. I am interested to hear the minister's conclusions and whether she would be prepared to consider a similar amendment at stage 3.

Dave Petrie: I do not think that anybody would disagree with the sentiments expressed by Donald Gorrie and Christine Grahame. I appreciate how important the health issue is, but if there is a perceived risk to anyone's health from a planning project, the local authority and the Health and Safety Executive are likely to ask for a risk assessment, with which developers must comply. I agree with John Home Robertson that wide-ranging health and safety legislation covers all circumstances. The amendments would lead to duplication and are not necessary.

Scott Barrie: I do not pretend to know where the development that Christine Grahame and Euan Robson have discussed is, and whether it is the only justification for amendment 189. However, the amendment is superfluous. Health considerations can be taken into account at the moment, and if there are going to be adverse effects stringent conditions can be imposed on any development.

As we have discussed, we have often found that conditions are imposed but their enforcement lets people down. There are two aspects. We can get conditions written into planning applications, but it is also important to ensure that they are enforced adequately to protect people from the things that Christine Grahame mentioned. Whether or not amendment 189 has been lodged only because of the situation described, it is superfluous, given that conditions can already be imposed. What we are looking for is greater enforcement.

11:00

Tricia Marwick: If, as Dave Petrie says, the Health and Safety Executive already has sufficient powers under existing legislation, communities would not complain to this committee and others that their lives are blighted by developments such as opencast mining. In fact, there is no way of dealing with the issue. It certainly cannot be addressed by health authorities or the Health and Safety Executive. If planning permission for such developments must be given, it is only fair that the planning authority seeks guidance from the professionals and a statement from health boards and others concerning the impact on health. It should be open to communities to make representations for expert opinion to be sought.

No one is suggesting that officials or councillors on planning committees need to be health experts, but they need to seek advice on planning applications for developments such as opencast. If we do not include in the bill a section of the type proposed by Donald Gorrie, it will be a wasted opportunity. It will also be a betrayal of people who have complained to this committee and other committees of the Parliament about the effect of opencast in particular. Amendment 123 is really important. I am not sure that Donald Gorrie has got the wording quite right, but the issue is so important that I urge him to press it. I will support amendment 123.

Cathie Craigie: I am sure that the intention of amendment 123 is to clarify in people's minds that local authorities take into account the effects on their health of any development in their area. I am sure that local authorities do that when considering applications. However, neither existing legislation nor the bill say anywhere that health is a material consideration. The message that we send out to the public seems to be that decisions can be made to cut light to dwelling-houses and about issues such as the acceptability of fences around a development and the number of parking spaces that are needed for it, but that planning authorities are unable to consider what the health implications might be. A local authority would never approve an application for a telecommunications mast if it did not comply with health regulations, but Government and agencies have not been able to get that message across to members of the public to give them comfort. People see the situation as unacceptable.

I hope that Donald Gorrie will not press amendment 123. The Executive should consider the matter further and come up with acceptable wording. I am sure that the minister would want any planning authority that is considering an application to take account of the health implications for the community concerned. I am interested in hearing what the minister has to say. Given his track record and the fact that he has not achieved any victories, I hope that Donald Gorrie will allow committee members and the Executive to consider the matter further.

Johann Lamont: The discussion is important. I was involved in the debate on the matter when I was convener of the committee and prior to that. It exercises minds throughout local communities.

Amendments 122 and 123 identify health and energy issues as "material considerations" that should be enshrined in legislation. As we have all agreed, they are indeed important issues. However, existing legislation already ensures that all material considerations, including health and energy, are taken into account when a planning application is determined. Those include, where relevant, the considerations that Donald Gorrie proposes, and it would not be appropriate to single out specific issues in the bill, particularly when those issues are often addressed by control regimes outwith planning, such as the Health and Safety Executive.

In its planning policy statements and advice, the Scottish Executive already includes guidance on how the planning system should deal with health concerns in relation to certain developments. Unless we argue that there ought to be no opencast coal mining, planning authorities will have to determine planning applications on opencast. Scottish planning policy 16 on opencast was well debated in the committee and in local communities. There are controls in that planning guidance, including an emphasis on the importance of environmental impact assessment and a recognition of the significance of noise and distance and of the importance of the planning authority taking the cumulative impact into account.

I have dealt with telecommunications masts in my community. Regardless of what the current scientific evidence says, people feel that they do not want a mast near them in case there is a negative effect. That means that the scientific evidence that we rely on must be robust. Health Protection Scotland is engaged in continuing research and, in a great deal of correspondence with members, I have emphasised that if there were a change in the results of that research, our guidance would have to react to that and would do so. There are also other control regimes.

If people who are frustrated about telecommunications masts do not believe what is said about the current research, that poses a real challenge to us all. How do we use the planning system, as opposed to other control regimes, to address it? I have often said that if somebody feels that they do not want a mast near them, it is difficult for us simply to say that we do not acknowledge their feelings. However, for the

planning system, an objection must be based on scientific evidence, so the Executive has made a commitment to ensure that the research is kept up to date and to respond to changes in it. The issue is not whether health is a material consideration but whether telecommunications masts represent a health challenge, which is quite a different thing. I understand the frustration about and the importance of the issue, but the current regime allows us to address a material consideration of health if one has been established.

On the promotion of sustainable development, the Executive is taking forward significant work on planning policy, building standards and energy and environmental efficiency to ensure that the principles behind amendment 122 are more appropriately integrated into the relevant processes. As Patrick Harvie highlighted, the Executive is reviewing and assessing the regime of permitted development rights and may consider taking microrenewables out of the planning system altogether because it is recognised that they should be a permitted development. That would encourage and facilitate the kind of approaches that Donald Gorrie has highlighted. We can emphasise those matters to local authorities in guidance and planning policies.

In amendment 189, Christine Grahame seeks to require a planning authority to consider attaching appropriate conditions if it considers that the health of people living in an area may be affected by a development that has been granted planning permission.

Under Scottish planning policy 11, we have indicated that local authorities should develop open space strategies and identify them in the development plan so that open spaces are protected from development. There is no question of simply encouraging local authorities to develop on every bit of green space. We recognise the importance of green space. The guidance in SPP 11 underpins much development in local communities, so protection exists.

Scott Barrie made a point about attaching conditions, which can already be done. It is also the case that construction impacts are a material consideration in an application. I cannot comment on individual applications, but conditions can be attached. I am sure that, in our all communities, we have seen routes into a construction site and hours of working identified in conditions that acknowledge the impact on the community. The argument on enforcement is critical to that.

I take the view that it would not be appropriate to single out in legislation specific issues to be covered in planning conditions, particularly when such issues are often addressed by control regimes outwith planning. As I have said, the Executive already includes in its planning policy guidelines guidance on how the planning system should deal with health concerns in relation to certain developments. I recognise what underpins amendments 122, 123 and 189, but we have in the planning regime an approach that addresses those issues. We are open to ideas about how we can encourage local authorities to engage with us in promoting our policy.

I recommend that the amendments are rejected.

Donald Gorrie: Before I launch into my spiel, I have a question of clarification. On amendment 123, are you saying that public health and the health of any individual likely to be affected in the event of an application for planning permission being granted are already material considerations in law?

Johann Lamont: They can be.

Donald Gorrie: Is it stated in law?

Johann Lamont: The point is that we do not identify individual material considerations in the legislation, but if something is a material consideration, the local planning authority takes it into account. It is identified and attached to the case.

Donald Gorrie: My understanding and recollection, which can be at fault, is that in the case of masts, the position in planning law—setting aside any scientific case—was that a planning committee could not take public health into account. We were clearly told that. Other members have met that issue in other areas.

Johann Lamont: I stand to be corrected, but if the health problems of telecommunication masts have not been established in scientific evidence, they would not be a material consideration.

Donald Gorrie: No, but with due respect that is not what I was saying. The guidance that we were given was that if a planning committee turned down an application on health grounds, the applicant could appeal and win.

The Convener: Mr Gorrie, the minister has attempted to answer your question. You might not like the answer that she has given you—

Donald Gorrie: I do not think that the answers are correct.

The Convener: You can address those points when you wind up the debate on the amendment.

Donald Gorrie: I stand corrected. I accept that we cannot prove a negative. We do not want to make planning officials experts on public health. All amendment 123 seeks to do is to give the people who are experts on public health their say and to ensure that the planners take that into account. The local planning committee will exercise its judgment in deciding whether what the

experts say is a legitimate planning issue.

I am indebted to Patrick Harvie. I left out of my argument the question of new build—I concentrated on improving existing building. The fact is that we are building shoddy houses as regards energy conservation. Our performance is lamentable compared with performance elsewhere in northern Europe and in future we will pay the price through huge energy bills, which could be reduced if we imposed decent standards now. Patrick Harvie raised an important issue.

I am also indebted to Tricia Marwick, who made my argument much better than I could. With all due respect to the minister, it is important that amendment 123 is agreed to, because it puts directly in the bill the fact that health is a material consideration. Furthermore, we should support microrenewables and energy conservation schemes in existing houses and in new buildings, as amendment 122 attempts to do.

I hope that the committee supports the amendments.

11:15

The Convener: The question is, that amendment 123 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 123 disagreed to.

Amendment 124 moved—[Donald Gorrie].

The Convener: The question is, that amendment 124 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 124 disagreed to.

The Convener: Does Donald Gorrie wish to move amendment 122?

Donald Gorrie: I will not move amendment 122, because it was covered by amendments 123 and 124.

Amendment 122 not moved.

The Convener: Amendment 185, in the name of Donald Gorrie, is grouped with amendment 187.

Donald Gorrie: Amendments 185 and 187 represent an effort to create a positive aspect to planning. Too much planning is negative and is about stopping people doing what they want to do. Planning should be about creating better communities and the amendments try to address that. On the whole, the language may be non-bill-type language, but the ideas that lie behind it are good and I hope that the committee will support the amendments.

Under amendment 185, a planning committee would consider

"the desirability of creating or maintaining a vibrant and viable local community".

That would be the objective of the whole planning system, and any individual planning application would have to be considered in that light. The amendment gives the example of parking, which is often the subject of controversy among residents, visitors, tourists, shopkeepers and commuters. The purpose of dealing with an application is to create a better community, which is the point of amendment 185.

Amendment 187 tries to address the local community's values and priorities. There may be differences of opinion, but it is important that a planning committee bears those factors in mind. People in an area might hold the strong view that the area's future lies in preserving the community's attractiveness and developing the tourism industry there, whereas other people might like commercial activities that might not be suitable in a tourist environment. The community should present those views and the planning committee should pay attention to them. If the predominant view in an area is that the area's attractiveness to tourists should be developed, planning decisions should reflect that. The aim is to reflect the local community's values and priorities. Views may well differ, but the planning

committee can assess where the weight of public opinion lies.

Amendments 185 and 187 set out the objectives of creating a vibrant and viable community and of reflecting the local community's views on what sort of community it wants to develop into. I hope that members will support them.

I move amendment 185.

Scott Barrie: The objectives that Donald Gorrie describes are what planning committees strive to achieve anyway. We sometimes underestimate how difficult a job it is to match the needs, aspirations and wishes of all the different segments of a community vis-à-vis a proposed development that—whether or not everyone agrees—might be in the community's best interests given the further economic activity that it would promote.

Another issue is that it would be difficult to find out what tourists might want in a particular area. A difficult dilemma that many of our communities face is that residents may not want their community to be preserved simply as some sort of historic anachronism that people like to visit. The people who live in the community might want to live in an environment with the modern amenities that the rest of us probably take for granted. We should not have a fossilised idea of the views that visitors and tourists might have of a certain area. It would be very difficult to get planning committees to take the views of tourists into account.

In many of our traditional historic areas—I think of Culross in my constituency—it would be ludicrous for the planning authority to permit changes to, for example, an attractive 17th century village. However, the needs of the people who live in the village also need to be considered. Any planning committee worth its salt will strive to balance those interests. To try to put into legislation how those things should be taken into account is to confuse what is already a very difficult issue.

Tricia Marwick: None of us would disagree with the sentiments that are expressed in amendment 185. We all wish to see "vibrant and viable" local communities; the challenge is to ensure that we achieve them.

However, I am not convinced that it is desirable to have such an aspiration on the face of the bill. Amendment 185 would make things extremely difficult for local authorities. For example, if a local authority agreed to a development that no business had signed up for, where would that leave the requirement to provide for

"the needs of residents, businesses and visitors"?

The amendments are aspirational. It sounds to me like they aspire to recreate Prince Charles's village of Poundbury, down in England, where everything was created from scratch and everything interrelates. Although I agree with some of Prince Charles's comments about architecture and do not necessarily agree with all Poundbury's critics, I think that we need to be careful about enshrining in legislation provisions that would result in our having wee Poundburys all over Scotland.

The Convener: Having visited Poundbury, I certainly hope that we do not do that.

Tricia Marwick: You may well say that.

Although I agree with the aspirations of the amendments, I do not think that they can be enshrined in legislation. If Donald Gorrie presses amendment 185, I will regretfully oppose it.

Christine Grahame: I, too, am sympathetic to the amendments, but I believe that to include on the face of the bill provisions about on-street and off-street parking is to micromanage planning. In any event, authorities should take into account considerations such as road safety whenever they consider an application for a housing development.

I also do not know how on earth the amendments could be enforced. Amendment 187 provides that

"For the purposes of subsection (2), the values and priorities of the local community … are a material consideration."

How could a challenge be made on that basis? Similarly, amendment 185 provides that

"the desirability of creating or maintaining a vibrant and viable local community … is a material consideration."

How could that be challenged? I agree that the policy of planning authorities ought to try to achieve that, but we cannot put that in statute. If people who thought that those considerations had not been taken into account tried to rely on those provisions in court, I do not know how they would establish a case. There are issues of enforceability.

Patrick Harvie: Like others, I very much like the spirit of amendments 185 and 187, but I take the view that the intention behind the amendments, although probably achievable through legislation, cannot be achieved by means of two short amendments to the bill that is before us.

The amendments refer to the need to have

"a vibrant and viable local community"

and to take into account

"the values and priorities of the local community".

At least one attempt has been made to capture similar proposals in legislation at Westminster and,

given that the proposals have achieved a degree of cross-party support, I think that in the slightly longer term we should consider similar legislation in the Scottish Parliament. However, amendments 185 and 187 do not pin down everything that would need to be pinned down for them to achieve their aim.

Johann Lamont: Amendment 185 seeks to regard as a material consideration in every planning application the high-level aim of

"creating or maintaining a … local community".

As the committee knows, I bow to no one—not even Donald Gorrie—in my commitment to taking a positive approach to planning and to liberating planners and planning authorities from the daily grind of dealing with applications. I want to allow them to see the big picture. For that precise reason, we have to be honest about getting the balance right as we seek to achieve our goals of efficiency and inclusion. The balance between local and national decision making must be right.

Whatever we put in the bill, the test must be this: will it make a difference? If we want a planning system that allows people to be aspirational, that test must come into all our considerations. That is why the planning system that we want to establish will be development-plan led. It will allow a high-level commitment to strong and vibrant communities to be clearly expressed.

People have spoken about the needs of communities as opposed to the needs of tourists. Places can be thought of in different ways: what one person describes as "Hebridean heritage" some of my forebears would have described as houses that they were desperate to get out of. Such tensions will always exist. In their development plans and in their consideration of individual cases, it is for planning authorities to sort out the inherent conflicts in having a broad aim for communities.

Some developments, on their own, might not meet the high requirements on all counts, but having to apply such wide-ranging material considerations to all applications could be meaningless. It is for the planning authority to get the balance of developments right. High-level aims are most properly identified in the development plan, from which other ideas can flow. Therefore, I ask the committee not to support amendment 185.

Amendment 187 seeks to make the "values and priorities" of a local community a material consideration that the planning authority must take into account when determining a planning application. Donald Gorrie has acknowledged that a community might hold a variety of views on its values and priorities. We have seen in communities examples of the sharpest of conflicts about what kind of community people want to live in. Even when one view predominates, there will be times when it is appropriate for the local authority to reject that view in the interests of having a strong and inclusive community.

Planning authorities must take a range of material considerations into account in determining a planning application, including the views of neighbours and local community groups. Planning authorities need to balance all material considerations in reaching their decisions; therefore it is not appropriate to put any particular one of them in the bill. As I have already suggested, communities do not always speak with one voice.

Communities already have the right to get involved in the preparation of the development plan, which is where local priorities for an area can be set. The development plan is where values and aspirations can be identified, and communities' rights are set to be extended and strengthened by the bill's provisions on development planning.

I urge the committee not to support amendment 187.

Donald Gorrie: I appreciate the comments that members have made. A defect of much legislation is that it is not aspirational enough. Our aspirations should be included in bills, so that people know what we are aiming at.

It can be difficult to set out aspirations, but if political parties were more aspirational we might get more people to vote. All the parties are not nearly aspirational enough. The most recent Scottish election was dead dull, and I think that that was because aspirations were not properly set out. We should set them out, but I accept that it can be difficult to find a way of doing that.

My amendments 185 and 187 do not say that we have to listen to visitors. However, to have a balanced community, we must provide for the needs of residents, businesses and visitors.

I still think that my two amendments are good, and I will press them. However, I accept that other people genuinely share the aspirations but do not agree with the amendments.

11:30

The Convener: The question is, that amendment 185 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, John (East Lothian) (Lab)

Marwick, Tricia (Mid Scotland and Fife) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 0, Against 9, Abstentions 0.

Amendment 185 disagreed to.

Amendment 187 moved—[Donald Gorrie].

The Convener: The question is, that amendment 187 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 0, Against 9, Abstentions 0.

Amendment 187 disagreed to.

The Convener: Amendment 186, in the name of Donald Gorrie, is in a group on its own.

Donald Gorrie: Amendment 186 arose out of conversations with Historic Scotland and church people. Serious disputes often arise out of planning applications relating to church buildings either because there is a desire to alter considerably the building to make it useable and of more value to the congregation and the community, or because there are questions about what will happen to a church or other building that is surplus to requirements; questions about who it can be sold to and what the possible uses for it are.

The objective of my amendment 186 is to enable Historic Scotland and the various church organisations to draw up guidance to help deal with such issues. In each case, Historic Scotland and the congregation or religious group would produce proposals in light of the guidance. The council would then take account of those proposals. At the moment, the planners, Historic Scotland or the religious organisations seem to take rather entrenched positions. The objective is to have national guidelines that enable local people to discuss what should happen to an important building within the community. The guidelines would weigh up the benefits that the building brings to the community. For example, a building could be used for lots of activities, but doing so might demand some kind of ugly addition to it. Does the increased activity within the community outweigh any loss of appearance of the church and so on?

As I said, amendment 186 comes out of discussion with those who are involved in the issue. It might appear to be a somewhat recondite subject, but there it is.

I move amendment 186.

Patrick Harvie: If the amendment was about buildings of cultural, aesthetic, historical and community significance, I would have a lot of sympathy with giving them particular attention in some way. However, I am quite puzzled about why we are considering an amendment that specifies places of worship. If we were talking about a beautiful church that had been converted into flats and were considering its future development as a building, it would still have aesthetic, cultural and historical importance, even if it was lost as a community space. It is the same building even if it is no longer a place of worship. I am therefore puzzled about why we are being asked to give places of worship specific treatment and not other buildings of cultural and historical importance.

Christine Grahame: I subscribe to Patrick Harvie's view. I had written down factories and hospitals. In areas such as the Borders, many mills now sit vacant. They should be sympathetically converted into housing or whatever and that is being done.

There is an issue about the sympathetic use of buildings that are, unfortunately in the case of churches, no longer fit for the purposes of modern living and require to be used in other ways. Like Patrick Harvie, I would not single out churches: many other buildings need sympathetic planning and in many cases that takes place. The amendment seems to be another attempt to micromanage planning. I certainly hope that planners listen carefully to what we say in committee about the matter. I would also like to see a proactive input from Historic Scotland, which sometimes comes to matters a bit late.

I cannot support amendment 186 because it is too specific.

Johann Lamont: Amendment 186 seeks to require planning authorities to take into account particular considerations in relation to planning applications that affect churches and other places of worship. Those considerations would include the policies of Historic Scotland, national organisations that represent churches and other religious groups as well as the interests of other users of the places of worship.

What considerations should be taken into account in relation to planning applications is a matter for the planning authority in the light of the

development plan and the other circumstances of the case. We do not support efforts to specify in the bill what will be statutory considerations in certain cases.

Owners, occupiers and lessees of such establishments will continue to be required to be notified of any applications for development of the premises unless, of course, they themselves are the applicant. They will therefore have an opportunity to put their views, or those of representative organisations, to the planning authority.

Similarly, Historic Scotland is, and will continue to be, a statutory consultee on planning applications that affect a range of its interests and, when it is appropriate, the Executive's planning guidance on the historic environment will be a material consideration.

I therefore recommend that amendment 186 be rejected.

Donald Gorrie: I drew attention to churches because, for the historical reason of the disruption, Scotland is in many cases overchurched. As Christine Grahame said, regrettably a growing number of churches will be surplus to requirements. The issue is how we deal with them in a sensible and sympathetic way.

In the case of a church there is also a vociferous congregation, even though it may be dwindling. Strong feelings are aroused by the issue, so it would be helpful to have some guidelines. The question of changes to the inside of a church are covered already and on the whole the church can get on with it. A provision such as that proposed in my amendment 186 would be helpful, although it may be that we should extend the provision to other buildings. My amendment would improve the treatment of redundant churches and churches that are being adapted. I therefore press amendment 186.

The Convener: The question is, that amendment 186 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Robson, Euan (Roxburgh and Berwickshire) (LD)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 186 disagreed to.

The Convener: Amendment 169, also in the name of Donald Gorrie, is in a group on its own.

Donald Gorrie: I lodged amendment 169 in response to suggestions from people who are involved in the legal side of planning. They said that the whole system is often thrown into disarray because at a rather late stage in the proceedings the planning authority starts pressing for what some people call planning gain, although there are other phrases for it. The planning authority says, "Okay, you can have your 100 houses, but we want you to put in a pedestrian crossing," or whatever it may be.

The argument is that planning gain is fair enough and that there should be negotiation on it, but that it should be at an earlier stage and should be part of the consultation. Instead of having lots of consultation and then, at the last minute, the council coming forward with a requirement for planning gain, that should be done at the beginning of the proceedings, so that it can be discussed with the developer and included in the consultation. It may well be that the community has different ideas from the council about the priorities for planning gain, and the community should be able to indicate what they would find most valuable if the developer were to produce something in addition to his development. That is the purpose of amendment 169, and I hope that the committee will consider it worth while.

I move amendment 169.

Tricia Marwick: Again, I have a certain amount of sympathy with Donald Gorrie's amendment. What we need, however, is a statement from the minister about where we are in terms of planning gain and the discussions that have been on-going with the Treasury about whether or not planning gain will be co-ordinated at national level or whether local authorities will still be permitted to enter into agreements on planning gain. I would like to hear what the minister has to say about that, so we need a statement on planning gain before stage 3.

Johann Lamont: I will deal first with amendment 169, which is intended to give greater public access to information about the content of planning obligations, currently known as planning agreements. I do not think that there is anything in the process that prevents that discussion from taking place during the consultation phase, or indeed during the pre-application phase. We should all be mindful of the fact that communities have often felt disappointed when a developer has promised something at an early stage in the process but that promise has not been delivered as part of the deal. Developers' engagement with communities must be honest, open and

transparent, and the planning gain obligation must not be seen simply as a bribe to get past the planning stage. A lot of work is being done on that.

Under the changes already set out in the bill, details of planning obligations will be made public in planning registers, and they may also be recorded in the land register. However, there are difficulties with the proposals in amendment 169, which seeks to involve a wide range of interests in the negotiation of planning obligations. Ultimately, an obligation is a legal agreement between the developer and the planning authority, and they should be able to conduct negotiations as happens in any contractual negotiation process. However, it is possible for the planning authority to publish in its local development plan an indication of the need for infrastructure in relation to proposed development, and to draw up local plan policies on such issues. Those indications and policies can be subjected to the usual public examination processes. We all recognise that planning obligations and negotiations on affordable housing can persist.

The supplement to the consultation paper on planning gain was issued by the Treasury and is a matter for the Treasury. It raised a great number of questions that need to be addressed before we can come to a firm view. We are aware of the many concerns raised by local authorities, developers, professionals and others about the outline proposals, and we are continuing to discuss those concerns with the Treasury as it develops the proposals further. Our aim is to secure a sensible and workable solution for Scotland that recognises the planning system as it is in Scotland. Amendment 169 would not assist the negotiation of planning obligations and is more likely to complicate them. I therefore ask members to reject it.

Donald Gorrie: The late appearance of discussions about planning gain has been pointed out to me as a problem and it is an issue that ought to be addressed. There may well be technical issues around exactly how it is done, but I think that amendment 169 is reasonably sensible, so I will press it.

The Convener: The question is, that amendment 169 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

The Convener: The result of the division is: For 0, Against 6, Abstentions 2.

Amendment 169 disagreed to.

Section 13—Pre-determination hearings

11:45

The Convener: Amendment 142, in the name of the minister, is grouped with amendments 174, 193 and 144.

Johann Lamont: Amendments 142 and 144 will ensure that planning applications for developments that require enhanced scrutiny are referred to the full council for decision and are not decided by an officer or committee of the authority.

Amendment 142 seeks to amend the Local Government (Scotland) Act 1973, section 56 of which refers to arrangements for the discharge of local authority functions. The amendment will make it clear that the determination of applications that are subject to enhanced scrutiny is a function that must be discharged by the authority—in other words, the full council—and not by a committee. The processing of an application up to the point of its determination can be delegated to committees or officials.

Amendment 144 seeks to amend new section 43A of the Town and Country Planning (Scotland) Act 1997 so that schemes of delegation cannot be used to determine planning applications for developments that are subject to pre-determination hearings, which are another of the enhanced scrutiny measures. Development proposals that require pre-determination hearings are specified using powers in new section 38A of the 1997 act. I ask members to support amendments 142 and 144.

Donald Gorrie's amendment 174 seeks to allow authorities to set up local citizen panels, which would consider planning applications that planning authorities referred to them and give advice on the determination of those applications. I do not support the principle behind the amendment because it could result in a less inclusive system of involvement in the planning system. It would limit the consultation on whether to set up a citizen panel to the community council or a body or trust that had an interest in enhancing the amenity of the area, none of which may be fully representative of the area.

Limiting the membership of the panel to people who lived and worked in the area would remove the right of people from outside the area who used its amenities to be involved in applications that

would have an impact on those facilities. For example, parents who lived outside a particular citizen panel area but who sent their children to a school in that area or community groups from outside the area who used its local community centre would have no say on planning applications that would have an impact on the school or the community centre.

I believe that Donald Gorrie's proposal has the potential to duplicate or undermine the work of community councils, which already have a statutory role in the planning application process and which may have a similar role in relation to development plans in the future. The whole thrust of our modernisation package is to involve local communities more effectively in the planning process, particularly in the drawing up of development plans. In addition, communities will be directly involved in pre-application consultation for certain types of development.

As has been said, community engagement is not a tick-box exercise; it is not about having one bit of the system that meets at a particular time. There are imaginative and creative ways of ensuring that it is not just people who can go to draughty village halls who are engaged in the process. I consider amendment 174 to be neither necessary nor appropriate and recommend that the committee rejects it.

Scott Barrie's amendment 193 would remove from planning authorities any flexibility in the delegation of planning decisions to officials. Most planning authorities already operate schemes of delegation and we want to encourage more use of delegation to ensure that straightforward local developments can be processed quickly by officers. The bill provides that, under a scheme of delegation, a particular application can be determined by members of a planning authority rather than by the officer who would usually process the application under delegated powers. That will provide authorities with a degree of local flexibility to respond to issues brought up by particular applications.

We do not envisage the provision being used to undermine the greater efficiency that we want to promote through schemes of delegation and we will set out detailed procedures for the operation of such schemes in secondary legislation. Part of the rationale for schemes of delegation is recognition that local authorities are best placed to take decisions on local matters. An element of flexibility is required to enable them to do that and because amendment 193 would remove any flexibility, I recommend that the committee rejects it.

I move amendment 142.

Donald Gorrie: The intention of my amendment 174 is to suggest an alternative way of dealing with issues that, under the bill as it stands, will be dealt with by an official. Those are small local developments, such as somebody building a conservatory or greenhouse, which can cause a lot of dispute in a small area. The amendment is not designed to apply to applications for large developments, but if, as the bill suggests, it is legitimate for some applications to receive consideration only by an official, it is reasonable to extend that so that the official is guided by some intelligent local citizens.

In a lot of small planning applications, disputes are not about planning, but about reasonable neighbourliness and what is acceptable in an area. Some interested local people—who are perhaps on a community council's planning sub-committee or who have studied planning—could make a useful contribution in dealing with such small but sometimes locally controversial issues.

As community councils do not exist everywhere, there is an issue in various places in the bill about how we identify the legitimate groups to be involved. However, some wording in the bill tries to deal with that issue, so genuine community groups could be involved.

The point is that the proposed local citizen panels would provide a pool of talent to help planning committees and departments to deal with troublesome small applications that take up a lot of officials' time. We would reduce the time taken, because applications would be dealt with mainly by citizen panels. A lot of the rhetoric surrounding the bill is that there is too much weight on planning officials in dealing with minor issues when they should be dealing with major issues. Amendment 174 would provide a mechanism to reduce the load placed on them by minor planning applications. I hope that my explanation clarifies the issue.

Scott Barrie: I will comment only on my amendment 193. The minister said that the intention is to have schemes of delegation throughout Scotland, as we do at the moment. However, some local authorities have schemes of delegation and some do not. They can have such a scheme under the Local Government (Scotland) Act 1973. Amendment 193 would ensure that all local authorities have a delegated scheme. That is important to ensure a degree of consistency across Scotland that we do not have at the moment. It is important that we make it clear that the intention is for local decisions to be taken at a local level. The minister accepted that that is the bill's intention, so I do not see why making that clear should be resisted, given that it would achieve what the bill is trying to do. I strongly ask the minister to make it clear why the amendment would contradict the bill's intentions.

Tricia Marwick: I will deal first with Scott Barrie's amendment 193, which I will support. He is right that if we are to have schemes of delegation in some parts of the country, we need them elsewhere. There should be no exceptions.

I will not support Donald Gorrie's amendment 174 on the idea of local citizen panels, made up of people who are interested in planning, examining individual planning applications with employees of local planning authorities. The thought of every busybody declaring that they have an interest in planning and need to be on the local citizen panel fills me with horror. The amendment would mean that somebody on the panel could look at applications in their local authority area. In the case of Fife, we could have people from Culross and High Valleyfield—

Scott Barrie: Good people.

Tricia Marwick: Good people, yes, and intelligent. They could consider applications for the Wemyss or, indeed, Markinch.

Scott Barrie: Bad people. [*Laughter.*]

Tricia Marwick: If the amendment were agreed, the panel would not be a local citizen panel, but a panel of interested people from all over the authority. I just do not think that it would work. It would undermine the community bodies that we already have in place, such as community councils, residents associations, church groups and other organisations that, I am sure, will be consulted by the local authority. I just do not see the need for local citizen panels. I am sorry, Donald, but I can see no merit in the idea.

Patrick Harvie: I can see merit in the idea. I hope that members will vote on amendment 174 not on the basis of the detail, which could be tweaked at stage 3, but on the basic idea—which should not attract laughter—that people who are not elected politicians might be able to make some decisions for themselves. Elected politicians should consider that idea.

We have scope in a number of areas of life to introduce citizens' decision making more than has been tried in Scotland. Some of the legislation that we have passed nods in that direction, such as the Licensing (Scotland) Act 2005, which introduced local licensing forums. Donald Gorrie's proposal is not a direct parallel of that arrangement but there is value in it. We should pass the amendment at stage 2 and tweak it at stage 3.

Johann Lamont: The fact of the matter is that we are dealing with legislation, which means that we have to deal with the detail. This is not about sending signals; it is about being clear about what we want to say in legislation and ensuring that what is written down is enforced. I am sorry that the fact that the detail is wrong means that an amendment has to be rejected, but that is the case. At that level, the decision to reject it has nothing to do with the quality of the idea behind it.

I want to make it clear that no one has a monopoly of concern about the issue of involving individuals and engaging communities. Indeed, the Scottish Executive has put a great deal of its money where its mouth is in relation to understanding the importance of working with communities. A lot of our social policy is now driven by an understanding that things cannot be decided at the centre. We are looking to good ideas and developments, such as credit unions and so on, and are supporting them. The thrust of our policies is driven by an understanding of that issue rather than by a wish to centralise.

I have no intention of laughing at or mocking anything that is suggested by anybody. On that basis, I address any proposal seriously.

Donald Gorrie said that there is a lot of rhetoric about liberating the planning system and making it more effective. It is more than rhetoric. The substance of our planning reform is about driving out the bits of the system that are unnecessary, getting rid of the inefficiencies and ensuring that people are more included and that, therefore, planners and communities can engage in the hard stuff around planning proposals such as what the proposals will do to their communities. That is why we have the hierarchy that is in the bill. It ensures that while the national planning framework will enable us to pay more attention to things at a national level, the small, minor applications that, as Donald Gorrie rightly says, excite a great deal of concern and which relate to issues such as good neighbourhoods and developing a strong sense of community, can be dealt with at a local level. That is why we would look to having a good and effective scheme of delegation. I do not think that Donald Gorrie's proposal addresses the issue of how we can deal with the minor concerns that are not planning matters but which annoy people. We have to consider how that can be dealt with, but, as I have already indicated, I do not think that Donald Gorrie's model deals with the question that he poses.

12:00

On Scott Barrie's amendment 193, I emphasise that, under the legislation, there is an obligation to create a scheme of delegation. That is what the legislation says. Scott Barrie wants to prevent a local authority, in any application, from departing from the scheme of delegation. We are saying that, in certain circumstances, although there is a scheme of delegation that identifies what goes where, there might be certain circumstances in which, because of local issues, the local authority would want to deal with the matter. We want to

ensure that the legislation allows that flexibility. Of course, we are committed to local decision making and wish to prevent the power of the first party from being abused. Therefore, we are saying that, if a decision is made by a planning official, there can be an appeal to a local review body. That is a means by which we try to maintain our commitment to getting the balance between local and national decision making right.

I do not think that we are in dispute about the importance of the scheme of delegation. We are not in dispute about the fact that local authorities should have them and that they are an important mechanism for making the system more efficient. However, we are saying that Scott Barrie's amendment would remove an element of flexibility and would make the system less fit for purpose. On that basis, I hope that Scott Barrie will not move amendment 193.

Amendment 142 agreed to.

Section 13, as amended, agreed to.

Section 14—Additional grounds for declining to determine application for planning permission

Amendment 170 moved—[Donald Gorrie].

The Convener: The question is, that amendment 170 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division. Please vote now. [*Interruption.*]

Christine Grahame: I am sorry, convener; I have been trying to find the amendment in my papers. Am I too late to vote now?

The Convener: There is a small window of time in which members can vote. On this one occasion, however, I will rerun the vote. If I do not do so, the votes of two members will not be recorded.

The question is, that amendment 170 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 170 disagreed to.

Amendment 188 moved—[Donald Gorrie].

The Convener: The question is, that amendment 188 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Marwick, Tricia (Mid Scotland and Fife) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 188 disagreed to.

Section 14 agreed to.

After section 14

Amendments 171 and 172 not moved.

Amendment 189 moved—[Christine Grahame].

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 189 disagreed to.

Section 15—Manner in which applications for planning permission are dealt with etc

The Convener: Amendment 190, in the name of Cathie Craigie, is in a group on its own.

Cathie Craigie: Amendment 190 is inspired by the Royal Town Planning Institute, which reminds me how clear the white paper was. From evidence

that was given by witnesses who came to offer the committee their opinions on the proposals in the bill, it is clear that key agencies' involvement in consultation and the planning process is important. The purpose of the amendment is to include a power of direction for ministers to enable them to require key agencies to respond to consultation on planning applications in accordance with good practice that the ministers will set out in regulations and advice. I am confident that that is the minister's intention in the bill, but I am keen to hear what she has to say on whether the amendment achieves what I seek to achieve or whether there is an alternative.

I move amendment 190.

Johann Lamont: Amendment 190 would allow ministers to specify in secondary legislation a requirement for the agencies that have been identified as key agencies for the purposes of drawing up development plans to engage with planning authorities when consulted on planning applications.

The duty on key agencies to engage on development plans is designed to ensure that policy or spending decisions that relate to land and infrastructure are properly co-ordinated, while the requirement on planning authorities to consult such agencies on planning applications allows the agencies to address their interests in individual applications. Although we could argue that the agencies should devote the same time and care to every one of the many applications on which they will be consulted, they must allocate resources to consultations in the way that they consider most effective. It is doubtful whether we could legislate on levels of engagement for the various types of proposal on which key agencies might be consulted in a way that would allow them to allocate resources effectively. Although we are keen to encourage effective and timeous responses to consultations on planning applications—indeed, we are aware of issues arising when agencies have not done that—there is a risk that a statutory requirement of the kind that is proposed in amendment 190 could skew the allocation of resources by the agencies that are involved. In practice, such matters are better dealt with in the agencies' business planning, in which they reach agreement with the Scottish ministers on appropriate targets and levels of service.

I hope that Cathie Craigie will acknowledge that, although we recognise the problem that she has identified, the solution that she proposes in the amendment does not address it. I ask her not to press her amendment.

Cathie Craigie: I have heard what the minister has said and I am sure that, like me, she wants the key agencies to be involved at every appropriate level for the benefit of good planning and good decision making. Having heard what she said, I will not press the amendment.

Amendment 190, by agreement, withdrawn.

The Convener: Amendment 173, in the name of Jackie Baillie, has already been debated with amendment 164.

Jackie Baillie (Dumbarton) (Lab): I will not move amendment 173 on the basis that the minister and the amendment's supporters would like an opportunity to reflect on last week's helpful debate in advance of stage 3.

The Convener: I think that it would be appropriate for the committee to have a short comfort break.

Christine Grahame: I seek to move amendment 173.

The Convener: You have missed the opportunity.

Christine Grahame: No. You moved on too fast; I was going to say that I wanted to move amendment 173.

The Convener: We had moved on.

Christine Grahame: We have not moved on.

The Convener: I made it clear in my opening remarks that, if a member did not move an amendment that they had lodged, the responsibility would lie with any other member of the committee to move it.

Christine Grahame: I know the procedures.

The Convener: I also made it clear that, if nobody sought to move the amendment immediately, we would move on. As nobody sought to move amendment 173, I moved on to tell the committee members that we would have a short comfort break. On this one occasion only, I will happily go to the vote, but I remind you that it is impolite to badger people while they are speaking.

Amendment 173 moved—[Christine Grahame].

The Convener: The question is, that amendment 173 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)

Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Petrie, Dave (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 173 disagreed to.

The Convener: I suspend the meeting for a short comfort break. We will resume at 12.15.

12:11

Meeting suspended.

12:15

On resuming—

Amendment 191 not moved.

Amendment 192 moved—[Donald Gorrie].

The Convener: The question is, that amendment 192 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 1.

Amendment 192 disagreed to.

Section 15 agreed to.

After section 15

Amendment 174 moved—[Donald Gorrie].

The Convener: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Home Robertson, John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 174 disagreed to.

Section 16—Local developments: schemes of delegation

The Convener: Does Scott Barrie wish to move amendment 193?

Scott Barrie: In the light of the minister's assurance, I will not move amendment 193.

Amendment 193 not moved.

The Convener: Amendment 143, in the name of the Minister for Communities, is grouped with amendments 137, 145 and 146.

Johann Lamont: It is a key component of the Executive's proposals that local authorities are best placed to take decisions on local matters. The bill therefore includes provisions for schemes of delegation to be prepared to promote more efficient processing of applications for local developments and consideration of reviews by a local review body rather than by appeal to ministers. Amendment 143 is intended to make it clear that, following a decision on an application that has been delegated for decision to a planning officer of the authority, no appeal to Scottish ministers is available. The amendment closes a loophole in the existing wording, which might otherwise undermine the intention to ensure that local authorities consider the review of all applications that are dealt with under a scheme of delegation.

We propose that the detailed arrangements for reviews should be consistent with those for appeals to Scottish ministers, in that regulations should be able to define the time limits that should apply both to a request for a review and to its consideration. It is also important that the terms of a decision following a review are clearly set out so that applicants are in no doubt about how their review case has been handled and why decisions have been taken. Clarity of decision making will help to ensure that reviews are carried out fairly and transparently.

Amendments 145 and 146 enable the supporting regulations to set out detailed arrangements that are both consistent with appeals to ministers and clear for users of the system. The amendments also confirm that the local authority's decision in a case that it reviews is final. I therefore ask the committee to support amendments 143, 145 and 146.

I turn to Christine Grahame's amendment 137. As I said, it is a key component of the Executive's proposals that local authorities are best placed to take decisions on local matters. The bill therefore includes provisions for schemes of delegation to be prepared to promote more efficient processing of applications for local developments and consideration of reviews of the decisions by a local review body rather than by Scottish ministers.

The proposal in amendment 137 would remove the provision for the local planning authority to review the case and would require instead that Scottish ministers consider all reviews. That would clearly undermine our proposals to increase efficiency and local accountability through local review bodies and our efforts to redress the perceived imbalance between the rights of appeal of first parties and those of local communities. Therefore, I recommend that members reject amendment 137.

I move amendment 143.

Christine Grahame: I hear what the minister says about reviews having to be fair and transparent, which was the concern that led me to lodge amendment 137. Under the bill as introduced, there will be a scheme of delegation by which the planning authority will determine whether to deal with an issue itself or to delegate it to an appointed person. Under the provisions of proposed new section 43A(7) of the Town and Country Planning (Scotland) Act 1997 the appointed person may go on to refuse an application, grant it "subject to conditions" and so on. If the applicant is not happy with that, there is a discretionary—but not mandatory—provision for the applicant to

"require the planning authority to review the case."

That would mean that the case would be sent back to the very authority that delegated it in the first instance.

My question is whether that process would be transparent and accountable. I think that proposed new section 47A(7) raises issues around article 6 of the European convention on human rights. The committee report referred to that in its recommendation at paragraph 109:

"The Committee recognises the concerns put forward by a number of bodies that a review being carried out by the same statutory body that took the initial decision—"

to delegate to an appointed person—

"may not comply with … Article 6 of the European Convention on Human Rights."

The committee asked the Executive

"to note these concerns and to make every effort to ensure that this part of the process is seen to be as open, transparent and robust as possible."

I just do not think that an open, transparent and robust process is possible if a review is referred back to the party who initially delegated matters to the appointed person.

The provision might be challengeable under ECHR. That is why my amendment 137 would require Scottish ministers to review the case at arm's length from the decision that was taken. I hear what the minister says about local accountability, but this is about independence within the process.

Scott Barrie: I will speak against amendment 137. When I lodged amendment 193, I was keen for there to be a consistent delegated scheme throughout Scotland. If we were to go down the road that Christine Grahame is urging us to go down, that would cut against the idea of taking local decisions at a local level.

I do not think that we can have a pick-and-mix idea in this case. We must go with a clearly defined delegated scheme in which officials will take decisions in the first instance, but local members will hear appeals. That process will keep decisions at a local level. If we do not do that, we must keep the existing process, with Scottish ministers hearing appeals against local authority decisions.

With all due respect to the ministers concerned, I think that there is a lot of anxiety and displeasure about the fact that in the current appeals mechanism people who are not directly affected by decisions are the final arbiters on local decisions. We want a scheme that keeps decision making at a local level. I cannot envisage any other way of doing that, except through what is proposed in the bill. Therefore, I urge the committee to reject amendment 137.

Patrick Harvie: Although I was one of the members at stage 1 who, as Christine Grahame said, was concerned about proposed new section 47A of the 1997 act, I must say that my thinking has changed. If we were talking about an appeal, I think that I would still be concerned. However, we are now talking about decisions being reviewed. There are other areas in life in which that approach is taken. For example, if someone disagrees with a decision following a freedom of information request, the first stage—before possibly taking the matter on to another stage—is to ask for the decision to be reviewed by the same body that took it. A similar example occurs in the child protection area with the reviewing of decisions about what information is held on a criminal record.

In this instance, it is appropriate for the planning authority to review decisions. That might not be the case if we were talking about appeals, but we are talking about reviews.

Johann Lamont: Far be it from me to resist support from Patrick Harvie, but after he has heard the implications of what is proposed, he may withdraw his welcome support for it. This would be the final stage of appeal by an applicant against the decision of a planning official. Rather than there being an appeal to the centre, the issue would be decided by a review body. Our aim is to strike the right balance between national and local decision making. I know that there are instinctive centralists on the committee who think that, by definition, any decision that is made at the centre must be better than decisions that are made by local communities. That thread runs through the argument about people's rights in the planning process.

We are attempting to address frustrations arising from the fact that the appeals system seems to be weighted in favour of applicants. If applicants do not get satisfaction from local authorities, they can take a significant amount of time to decide whether to appeal and can recast their arguments when the appeal is heard. We have said that, when an appeal is made to ministers, it should relate to the original application. We have also reduced the timescale for appeals. Applications that are delegated to an official, through a scheme of delegation, will be reviewed locally. That approach is a response to the frustrations that people in communities feel about the imbalance in the process.

The legal advice that we have received indicates that the proposals are ECHR compliant. At the heart of the issue is the view, which Christine Grahame expressed, that somehow corporate influence will be brought to bear on officials who are charged with deciding an application on its merits. Officials will be accountable for their decisions. If there is concern about those decisions, they will be reviewed at a local level. We have already said that planning departments must take a view that is separate from the corporate view of an application as good or bad in relation to local authority interests. The logic of the argument that Christine Grahame put is that it is not possible to have a scheme of delegation, because influence will be brought to bear on officials. Ultimately, that amounts to saying that it is not possible for a planning authority to carry out its functions if it is also a local authority.

I urge the committee to recognise the purpose of the scheme of delegation and the review body. We are seeking to strike the right balance between efficiency and inclusion and between local and central decision making. I urge members not to support amendment 137, in the name of Christine Grahame, and to support the amendments in the name of Malcolm Chisholm.

Amendment 143 agreed to.

Amendment 144 moved—[Johann Lamont]—and agreed to.

Amendment 137 not moved.

Amendments 145 and 146 moved—[Johann Lamont]—and agreed to.

Section 16, as amended, agreed to.

After section 16

The Convener: Amendment 125, in the name of Dave Petrie, is grouped with amendment 127.

Dave Petrie: It is generally acknowledged that the acid test of the legislation will be the speed and efficiency with which planning applications are handled. Members have seen the Executive white paper "Modernising the Planning System". With amendments 125 and 127, I am seeking fairly straightforwardly to implement paragraph 5.1.3 of the document.

Under amendment 125, the applicant and the planning authority would

"agree a date by which the application will be determined"

in the interests of streamlining and efficiency, as set out in the white paper.

Amendment 127 says that if a planning authority defaulted on an agreed date, the applicant would receive a fee refund, which would be agreed case by case. The drive behind amendment 127 is to offer authorities an incentive to determine applications efficiently, on time and in the spirit of the bill.

I move amendment 125.

12:30

Scott Barrie: I am all in favour of using carrots and sticks to achieve our aim, but if such an approach is taken, we must be careful to ensure that the stick is appropriate. We all know of inhibitors in the planning system—not least, third parties, Scottish Water, which we usually name, and others. It would be wrong to penalise a local authority with a penalty fee for not determining an application in time if that was not its fault but was because it was waiting for third parties to respond so that it could fully determine an application. For that reason, if no other, I urge the committee to resist amendment 125.

John Home Robertson: Mr Petrie is on to a fair point, because timing is a genuine gripe for all sorts of people—not only major developers, but householders and small businesses that want planning applications to be dealt with. I am aware of problems in my constituency that may relate to a lack or shortage of staff in the council's planning department, but I am not persuaded that the amendments provide the best way to deal with

that. I urge the minister to do anything that she can by other means to ensure that local planning authorities keep to a reasonable timetable in determining planning applications.

Patrick Harvie: I agree that we should aim to provide clarity about the processes that an application in the planning system will go through, but I disagree that that should be determined purely between the planning authority and the applicant. Among the many people who are angry and frustrated by the system's lack of clarity are the communities that decisions will affect. To provide such clarity for everybody would be reasonable, but to provide clarity only for two parties, as amendment 125 would, is not the right approach.

Johann Lamont: I will respond to a point that John Home Robertson made. The whole purpose of the planning reform is to seek clarity about and early discussion of planning in a plan-led system, which will allow clarity of process and efficiencies to be built into the system, so all the bits of the process that are unnecessary or bring in delays are removed. We do not necessarily think that efficiency and speed are the same thing, because efficiency also concerns the robustness and sustainability of decisions—that is the acid test not only of efficiency but of the package of measures that we have suggested.

Amendment 125 would allow processing agreements to be made between the planning authority and an applicant for planning permission. We support the concept of processing agreements, but only for major applications, in recognition of the fact that large and complex proposals are unlikely to be dealt with inside the statutory two-month period. Processing agreements will not be required for every type of application—that applies particularly to applications that fall within the category of local developments, most of which will continue to be processed efficiently and within the established two-month period. The amendment would enable agreements to be negotiated for all types of applications. Perhaps ironically, it would also be likely to introduce unnecessary delays through negotiation and to undermine the overall objective, which is to project manage major proposals to agreed timescales.

The vehicle for setting out detailed provisions that govern the processing of applications should remain secondary rather than primary legislation and it is inappropriate to include provisions for processing agreements in the bill. We do not consider the proposed provision for agreeing timescales by which applications should be determined to be necessary or practical, so I recommend that the committee rejects amendment 125.

Amendment 127 provides for the refund of the planning application fee in cases in which the application has not been determined in line with the processing agreement. The Executive proposes to allow the planning application fee to be refunded in certain instances when the terms of the processing agreement have not been met.

However, our proposals provide an element of flexibility in recognition of the fact, which Scott Barrie mentioned, that not every delay is caused by the action or inaction of the planning authority. Delays in processing planning applications might be due to the behaviour of statutory consultees or to the applicant themselves. Our proposals enable the fee to be refunded when an appeal against non-determination has been successful and the planning authority is found to have acted unreasonably. It is not reasonable to require the refund of the fee in every case, as has been proposed.

The provisions in section 29 are enabling ones and our detailed proposals for the refund or remission of fees will be contained in secondary legislation. In conclusion, we do not consider that a provision for the return of the fee in every case is necessary or reasonable. I therefore recommend that the committee rejects amendment 127.

Dave Petrie: I emphasise again that I came up with my proposal on the basis of the recommendations in the Executive's document "Modernising the Planning System". I was not referring particularly to the planning fee. I was referring to a fee that would be agreed at the start of the process. If the development was relatively minor, the fee might be a modest amount per week. For a major development, it might be a significant amount per week or per day during the delay.

I have worked through the old planning process and it is a nightmare because there are many delays. My proposal would provide an important carrot-and-stick approach, so I press my amendment.

The Convener: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Petrie, Dave (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 125 disagreed to.

Section 17—Call-in of applications by Scottish Ministers

The Convener: Amendment 200, in the name of John Home Robertson, is in a group on its own.

John Home Robertson: I lodged amendment 200 at the suggestion of the Royal Town Planning Institute in Scotland. The amendment's objective is to add to the transparency of the reform of the planning system by requiring ministers to give reasons for their decisions to call in—or, indeed, not to call in—applications that are referred to them under the notification of applications direction.

The bill and the Executive's intentions in secondary legislation seem likely to increase the number of applications that are notified for consideration of call-in. The reasons for referral will relate particularly to significant departures from the development plan and to local authority interest cases. The locus for ministerial call-in will extend beyond the existing practice of intervention where planning issues of national significance are at stake to include questions of procedural soundness and the management of the system by planning authorities, in which all parties, including third parties, will have a keen interest.

The transparency of the system will be improved by the new provisions, but there is an argument that that improved transparency should be extended to decisions on notification with a view to call-in. We have all heard interesting conspiracy theories about the motivation for decisions by the Scottish Executive—or perhaps more particularly by the old Scottish Office—on whether to call in applications. Some people have suspicious minds. In my career, I have heard suggestions that applications have been called in at the behest of senior civil servants who happen to live in the neighbourhood. I would not give any credence to that sort of rubbish, but that is said from time to time—although, I stress, not recently. My amendment would at least help to moderate the scope for speculation by conspiracy theorists, although, given human nature, we will never do away with that altogether.

I offer amendment 200 as a probing amendment. By requiring a written explanation of the grounds for the decision to call in or not to call in an application, it could help to add to transparency.

I move amendment 200.

Patrick Harvie: I offer clear support for amendment 200. Elsewhere in the bill, we have required decisions to be explained publicly. I see no reason why a written explanation of a decision should not be entirely public, but the requirement to provide such an explanation to specified people is certainly a welcome step. I cannot think of any reason why the Executive would resist the proposal—I hope that that is not a red rag.

The Convener: This is perhaps an appropriate point at which to ask the minister to respond to the points made in the debate.

Johann Lamont: I say to John Home Robertson that for conspiracy theories to gain any purchase, usually they must have at least a nod in the direction of credibility. The idea that the planning system might give succour to senior civil servant nimbys does not seem terribly credible—certainly not on this watch.

As I said last week, the notification procedure and the decision to call in or not to call in is not a straightforward, resource-free, cost-free process. It is taken very seriously.

Amendment 200 would require us to inform relevant parties and to provide a statement of our reasons either for calling in applications or for choosing not to call them in after they have been notified to ministers. That is all reasonable, and we do much of it already. We always state our reasons for calling in a planning application and I accept that it would also be reasonable to explain why we do not call in particular applications. We address our statement of reasons to planning authorities so that they know whether they should refer an application to us or proceed to decide it themselves, but I can see the sense in our also advising anyone else who needs to know.

Local authorities are the planning authorities for their areas. As such, they are best placed to make the vast majority of decisions on matters that affect their local communities. It is ministers' prerogative whether to call in a planning application. We are not obliged to do so and we have exercised our judgment in a way that is respectful of the important role that local authorities play in representing the interests of their areas. We intervene only when we consider it necessary, when an application has raised issues that warrant our intervention and a decision at a national level.

When we consider whether to call in an application we are not making a decision on the application itself but looking at who should make the final decision on the proposed development. I agree with the thrust of amendment 200: we should ensure that the reasons behind any decisions we make on whether to call in applications are widely known and properly understood.

The arrangements for handling applications notified to ministers are already set out through a

development order and the existing notification direction, which we intend to replace as soon as possible after royal assent, as I am sure members will recall from our discussions on the matter of local authority interest cases and the notification direction. That would be a more appropriate way in which to amend this processing arrangement, as it would keep the relevant provisions in one place. I assure the committee that we will work on our processes to ensure that they take on board the principles of amendment 200. For that reason alone, I ask members not to support the amendment.

John Home Robertson: I strongly agree with the minister that it is best for local authorities to determine planning decisions locally whenever possible, although I fully understand that there are occasions when it is necessary to call in applications.

I welcome the minister's comments, the clear intention that she has expressed that the Executive wants to ensure that the process is transparent and her assurance that there are other ways to achieve that. Under those circumstances I am content to withdraw amendment 200.

The Convener: Mr Home Robertson has sought leave to withdraw amendment 200. Does anyone object to the amendment being withdrawn?

Members: Yes.

The Convener: The question is, that amendment 200 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 200 disagreed to.

Section 17 agreed to.

The Convener: My intention was that the committee would continue to consider amendments until 1 o'clock today. However, the amendments in the next group cover substantial issues that are important to all committee members and to a number of members of the Parliament who are not members of the committee but have taken a keen interest in the bill. It would not be appropriate for us to curtail discussions on those matters, so my intention is to stop consideration of stage 2 amendments at this point. As that concludes our consideration of the Planning etc (Scotland) Bill for today, I thank the minister and her officials for attending the meeting.

I remind those present that further amendments to the bill should be lodged with the clerks by 12 noon on Friday.

12:46

Meeting continued in private until 13:08.

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