COMMUNITIES COMMITTEE

Wednesday 27 September 2006

Session 2

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COMMUNITIES COMMITTEE
25th 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:

Donald Gorrie (Central Scotland) (LD)
Robin Harper (Lothians) (Green)
Johann Lamont (Deputy Minister for Communities)
David McLetchie (Edinburgh Pentlands) (Con)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Ms Sandra White (Glasgow) (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 27 September 2006

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

Planning etc (Scotland) Bill: Stage 2

The Convener (Karen Whitefield): I open the 25th meeting in 2006 of the Communities Committee. I remind all present that mobile phones should be turned off.

The first and only item on the agenda today is the Planning etc (Scotland) Bill. The committee will consider amendments to the bill on day 5 of our stage 2 deliberations. Members should have before them copies of the bill, the marshalled list and the groupings.

I welcome to the committee the Deputy Minister for Communities, Johann Lamont. She is accompanied by Tim Barraclough, John McNairney, Norman MacLeod, and Stuart Foubister, who are Scottish Executive officials. We will be joined by Nikola Plunkett should we reach the groupings on business improvement districts.

Before we start it may be helpful if I remind members of a few points. In order to speed things along, if a member does not wish to move their amendment they should say, "Not moved." In that event, and at that point, any other member can move the amendment, but I will not specifically invite members to do so. If no other member moves the amendment, I will go to the next amendment on the marshalled list.

Secondly, if a member wishes to withdraw an amendment, I will ask, "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 18—Appeals etc

The Convener: Amendment 126, in the name of Mike Rumbles, is grouped with amendments 130, 251, 201, 218, 206 and 219.

I should have welcomed Mike Rumbles, Sandra White and Donald Gorrie to the committee. They all have an interest in the bill.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I have brought effectively only one amendment before the committee. I aim to address what I hope is a non-partisan issue that I believe is also an issue of natural justice. Amendment 126 aims to put right a wrong. Is that not our role as MSPs? Should we not be able to examine an issue on its merits?

I know that ministers are incredibly reluctant to accept back-bench amendments that are lodged at stage 2 because nearly all amendments are lodged to further an MSP's policy objectives, although there is nothing wrong with that. However, back-bench amendments are resisted by ministers mostly because they do not sit well with the policy objectives that the ministers are here to see through. That is also fine, and I have no objection to it. However, I hope that colleagues will see that on this occasion I have left the politics of the bill to others because I want to tackle one issue to correct a wrong in the system. When we pass new laws it is important to remember that we should always be concerned about how the legislation will impact on individuals.

What is the wrong that I want us to put right? I am sure that members all know that, as the law stands, there is no right of appeal in planning for the people who are directly affected by planning applications—the neighbours who are in receipt of a neighbour notification about a local development. As we all know, if an application is turned down, a developer has the right of appeal. That is fine. However, if an application is approved, there is no such right of appeal for neighbours, who can be badly affected by what is sometimes a perverse decision.

We are all human beings, and human beings make mistakes. Our local councillors are no different. Although I am certain that the decisions are usually of the highest standard and the highest order, no one—not even the minister, I assume—would consider councillors to be infallible. Mistakes are made. Amendment 126 would give people the chance to have mistakes rectified.

I will give members one example of what I mean, because I need only one example. My constituents, Mr and Mrs Desmond, of Crathes on Deeside, have given me permission to make this point because they are very concerned about it. Their lives have been blighted by our local councillors' decision to allow the building of a house in their neighbour's garden, against the recommendation of planning officials.

I am not questioning the right of our councillors to grant permission, but the planning system has come into disrepute because there is a feeling that the process is stacked against people such as Mr and Mrs Desmond—certainly, that is what Mr and Mrs Desmond feel. I am using that example because the system affects real people. This is not an academic exercise. There is no way of

overturning what Mr and Mrs Desmond consider to be a perverse decision that went against all the recommendations of the experts and officials.

I want to see a balance returned to the system for people such as Mr and Mrs Desmond. It is not good enough to say that the bill is good and that the new system will be effective and work well. Mistakes are made because people make mistakes. We should have the good grace not only to recognise that—I am sure that we all do—but to take practical action to put the mistakes right. That is simply what I am asking the committee to do this morning.

In particular, I am appealing to the minister's sense of fair play. I hope that she recognises that, no matter how good the new system is, people are human and mistakes will be made. We have the opportunity to enable wrongs to be put right, and I hope that she will accept amendment 126 in the spirit in which I have presented it.

I do not want to comment on the other amendments in the group. I am here specifically to put right what I consider a wrong.

I move amendment 126.

Ms Sandra White (Glasgow) (SNP): This is third time lucky, as it is the third time that we have turned up to debate the issue. Thankfully, we are being heard today, so I am grateful to the committee.

I think that my amendment 130 is pretty straightforward, but others might not deem it to be so. It was in the proposal for a third-party planning rights of appeal bill that I produced in 2003, and although I am fully aware of the changes that the committee has recommended and the Executive has made through the Planning etc (Scotland) Bill, I do not think that they go far enough.

Two weeks ago, Jackie Baillie said that she had produced an eloquent and elegant amendment, and Christine Grahame said that I would be presenting a "full-frontal" amendment. I do not know whether members will see amendment 130 in that light, but I hope that they will listen to my case for a limited third-party right of appeal, because justice, fairness and transparency must be seen by everyone to come before the Parliament. That is one reason why I lodged amendment 130.

The third-party right of appeal that I propose in my amendment is limited, as it would not affect national development. I understand the position fully. When I was a substitute on the Communities Committee, I read various documents about the national planning framework, and I came to the conclusion that I would not include national development in my proposed third-party right of appeal. However, such a right needs to exist for other situations. Mike Rumbles mentioned neighbours, but I feel that that is perhaps too limited.

Individuals should have a right to appeal, and my amendment 130 would give that to

"any person who made representations relating to the application to the planning authority".

At the moment, any person who makes representations to a planning authority as an objector has a right to be heard, whether in an inquiry or in a public hearing, so amendment 130 follows on from current legislation. That provision exists because the public should have such a right. If they have taken the trouble to object to a particular planning development in their area, they should have the right to appeal. That is why my amendment 130 refers to

"any person who made representations",

unlike Donald Gorrie's amendment 251, which refers to community councils. The term "any person" can refer to a body of people, whether or not that is a community council.

Members are familiar with the third-party right of appeal. My proposal, which is fairly straightforward, is that it should be limited to the following categories. The first two categories are applications that are

"subject to an environmental impact assessment"

or which relate to

"land the planning authority owns or in which it has an interest".

The third category is where

"the granting of planning permission in respect of the application is contrary to … any current strategic or local development",

or where any recommendation has been made about an application

"by officers employed by the planning authority".

At the moment, an objection can be made on those grounds. I commend the Executive for saying that it wants to listen to objectors and for the consultation process that is set out in the bill. The process will allow for people to be listened to, but at the end of the day they would have no right to appeal a decision, unless amendment 130 were agreed to and the application came under proposed new section 47(2C) of the Town and Country Planning (Scotland) Act 1997.

I cite the example that Pauline McNeill MSP gave in her recent evidence to the committee:

"Another problem is that when a planning committee refuses to grant planning permission on the basis of the local plan, that does not prevent the developer from appealing and arguing that the local authority failed to apply the local plan and that the developer has a different

interpretation of it. The local authority is judge and jury on the local plan but, unlike anyone else, developers have the right to challenge it when there is a dispute."—[*Official Report*, *Communities Committee*, 13 September 2006; c 3921.]

That is why a third-party right of appeal should be included in the bill.

As I said, it is unfair that people who are directly affected and who have taken the trouble of making representations cannot challenge a decision. For example, Tesco is proposing a huge development in Partick. Although Tesco has pulled back its plans, the development will still change the face of the area—shops will close down and so forth. If the development goes ahead—against the local plan and local feeling—objectors and the local community will have no right of appeal.

I suggested previously that, in order to level the playing field, the right of appeal should be taken away from the developer, in which case a third-party right of appeal would not be needed. That suggestion was turned down. People out there—objectors, interested parties and local communities—feel that, although they will be listened to and consulted, at the end of the day they will have no recourse to appeal a decision.

I am not saying that every appeal would be successful or that an appeal would be made in every case. I have even gone so far as to suggest that a charge of £20 or £25, which would not be prohibitive, could be made for appealing a decision. I am saying not that a third-party right of appeal should be open to everyone but that fairness ought to prevail. At the moment, fairness does not prevail.

I do not want to labour the point. I will hear what the minister has to say. Am I allowed to come back in again after the minister, convener?

The Convener: I am afraid that you are not. As the member with the lead amendment in the group, Mike Rumbles has that right. Unfortunately, other members do not.

Ms White: I will therefore continue.

I am aware that the committee has been considering the bill for many weeks and, as I said, members are familiar with the third-party right of appeal. In the interests of fairness, justice, transparency and the reputation of the Parliament, I suggest that some form of third-party right of appeal should be included in the bill.

Rather than include national development, I have limited my proposal to certain categories of application. That seems to be the best way forward. As I said, I am in favour of all the good provisions in the bill, such as good neighbour agreements and consultation. However, something is inherently wrong in the planning system if people are not being given the right of appeal.

There has been a lot of scaremongering on the issue. Indeed, an article in one of the Sunday newspapers—I cannot remember which—reported various developers as saying that, if there was to be a third-party right of appeal, Scotland would become a backward country. We have only to look at countries that have a third-party right of appeal, such as Australia, New Zealand, Denmark and Ireland—I have listed them previously—none of which is a backward country; development is proceeding well in those countries.

Developers will not run from Scotland and take their investment elsewhere. The example that is raised constantly is the Irish example, yet, in Ireland, only 2.6 per cent of applications go to appeal. The number of third-party appeals is small. As I said, in the interests of fairness, introducing a third-party right of appeal is the way forward. I thank the committee for giving me time to make my case.

09:45

Donald Gorrie (Central Scotland) (LD): Mike Rumbles and Sandra White have covered a lot of the arguments for a third-party right of appeal. Amendment 251 tries to keep to what I think is the basic irreducible minimum that should be allowed. It therefore contains constraints on why an appeal can be made and on who can appeal.

There are two issues on which there should be a right of appeal. The first is where the local authority has a significant interest, either because it owns the ground in question or because it is part of a consortium that is involved in the proposed development. The second is where there is a major breach of the strategic or local development plan. Amendment 251 is limited to those two issues.

In both instances, it is fair to say that the council should not be the final arbiter in a decision that affects its own ground or activities and from which it can benefit. The council has a plan on which it has consulted, so if it is going to support a major breach of that plan, it should not be the final court of appeal if there should be an appeal against that breach.

Amendment 251 goes on to say that the appeal would have to be made by a community council or other recognised community body. I have taken the definition of "community body" from the section in the bill on good neighbour agreements, which contains a bit about community bodies and trusts. I am trying to establish that a genuine local body that speaks for local people—albeit not all local people, because opinions are often divided—could appeal. If the planning authority voted to grant

planning permission under the circumstances that I have outlined, a community body would be able to appeal to the minister. The community body would have to set out the ways in which, in its view, the development would harm the community, why it was an important breach of the development plan, whether the consultation was adequate and whether some changes to the development would make it satisfactory. Quite often, an objection is to aspects of a development rather than to the whole thing.

When all that was set out to the minister, the minister would judge local public opinion. Although the appeal might come from a bona fide community body, lots of other groups, individual members of the public who are not organised into groups or other local authorities might have a different view relevant to the case. The minister would also have to examine the planning authority's reasons for granting planning permission. All those factors would have to be weighed up; the minister would then decide whether to call in the application and have a proper inquiry.

Amendment 251 deals with the issue as basically as possible. It would not cause hundreds of appeals that would bring the planning system to a halt. It would not allow one or two nimbys to stop everything. An appeal would have to come through a genuine community effort and have genuine arguments.

I hope that the committee will accept amendment 251, but it is fine if members want to improve bits of it. The Executive's consultation on the third-party right of appeal showed that opinion was polarised, but there are very strong opinions among individuals, community groups, amenity bodies and people involved in that part of society that they should have some right of appeal.

However good the proposed system of scrutinising plans at an earlier stage, there should be an ultimate right of appeal to deal with situations in which things have gone wrong, especially if the council has been the judge in its own case. I hope that the committee will look favourably on amendment 251.

Christine Grahame (South of Scotland) (SNP): I heard what Mike Rumbles had to say, but amendment 126 is too broad. In the example that he gave, he kept talking about a mistake by a planning officer. Just because a decision goes against someone, they cannot say that a mistake has been made. To say that a mistake has been made is to make a highly subjective judgment. A mistake or an error is defined in law; it is not the same as a decision that one does not like. The example that Mike Rumbles gave related to a situation that would be covered in amendment 130, when an authority had gone against a planning officer's recommendation. It would have been better if Mike Rumbles had gone down that route. Amendment 126 is far too broad.

I am always sympathetic to Donald Gorrie's amendments; I only wish that the spirit of what he wants to achieve could be put down on paper. I worry about how the provisions that amendment 251 proposes would operate. The proposed new subsection (2D) that would be inserted into section 47 of the 1997 act by amendment 251 states:

"In deciding whether to hold an inquiry … the Scottish Ministers may take account of … local public opinion".

It is difficult to work out how on earth that could be done. Would a referendum be used, for example? I know where Donald Gorrie is going with the provision and acknowledge that his arguments for it are commendable, but I doubt that it would be operable.

The same applies to the definition that Donald Gorrie suggests should be contained in proposed new section 47(2F) of the 1997 act. A relevant body is defined as one whose

"members have a substantial connection with the area affected by the proposed development".

It would be easy to define "a substantial connection" in cases that were black and white, but less easy to do so in cases that were greyer. Would the provision include people who used to live in the area a decade or even 50 years previously, but who had maintained contact with it for sentimental reasons? The provision would be difficult to implement. On that basis, I cannot support amendment 251, even though I support much of the spirit behind it.

I obviously support my colleague Sandra White's amendment 130. It may not be the best drafted amendment, but it is more tightly drafted than amendments 126 and 251. It is narrow, in that it would apply only in limited circumstances, and in providing that someone "may appeal", it would merely give them discretion to appeal.

I want to focus on proposed new subsection (2C)(c)(i) that amendment 130 would insert into section 47 of the 1997 act, which mentions the local development plan for the area. In our discussions, the committee has spoken at length about the need for people in communities to feel secure about the local development plan. We know that many of those plans were found to be so out of date that they were almost completely irrelevant to what was happening.

If people are to feel secure in the cycle of local development plans, they must be able to appeal when planning permission is granted for a development that is contrary to the local development plan. In the light of all that has been said by the committee, ministers and others about

the need for the local development plan to provide people with a sense of security, surely that is a crystal clear example of a situation in which the community should have an absolute right of appeal. If a community found out that 50 houses were to be built in an area that was not scheduled for housing in the local development plan, the developer—who would have a right of appeal—could go ahead, but the people who would end up getting the development in their area would have no right of appeal.

I believe that people should have a right of appeal in the narrow circumstances that Sandra White has outlined in amendment 130, which I commend to the committee.

Tricia Marwick (Mid Scotland and Fife) (SNP): I congratulate Sandra White on lodging amendment 130 and on the work that she has done in the Parliament over the years to campaign for a limited third-party right of appeal. From her proposed third-party planning rights of appeal bill to the amendments that she has lodged to the Planning etc (Scotland) Bill, she has been steadfast in her efforts to ensure that a community voice is heard in planning.

It is thanks to the work of Sandra White and others that we have a bill in which the minister has made some proposals for community involvement. The issue is high on the political agendas of all the parties. This week, we are debating two amendments on the issue that were lodged by Liberal members, and last week we voted on amendments lodged by Jackie Baillie and a number of Labour MSPs. There is no doubt that throughout the Parliament there is a belief that although some aspects of the minister's proposals are welcome, they do not go far enough. I ask the minister to reflect on that in examining amendments today and more especially in considering stage 3. Members across the Parliament believe that we need to go a bit further to ensure that communities are secure, as Christine Grahame said, and that people feel genuinely involved in the planning process in a way that they do not at the moment.

I will not support Mike Rumbles's amendment 126, for the reasons that Christine Grahame gave. Sandra White's amendment 130 could be differently worded for stage 3, but it is tightly drawn. Her amendment would provide a third-party right of appeal in very limited circumstances, so I will support it.

Scott Barrie (Dunfermline West) (Lab): Sandra White is right to say that the planning system needs to be transparent, fair and just. There is no doubt about that. My difficulty with amendments 126, 130 and 251 is that they would lock the stable door after the horse had bolted.

I understand that the intention of the bill is to recreate the whole planning system. If, after that, we still argue about bad decisions being made, the bill will not have achieved the change in the planning system that we hope it will. By continually lodging such amendments, people are arguing about the wrong end of the bill. It is important to consider where the bill started and the engagement that communities will need to have in drafting local plans, which will have primacy.

The difficulty that many of us—including, certainly, non-committee members—have had is that we are still thinking about the planning system as it is, rather than as it will be. If we bolt on to the new planning system problems in the existing planning system, we will not achieve the new planning system; we will just have the current planning system with a few minor amendments. For that reason, the amendments are wrong. We must encourage communities to see that they need to be involved at the start of proposals, rather than towards the end when they would have to use a backstop to try to reverse a decision that they did not want. The system will involve putting in effort at the beginning rather than at the end of a process.

Mike Rumbles gave a particular example that involved his constituents. Under the bill, planning authorities will have to give reasons for rejecting or approving recommendations. That does not happen at the moment, when people hear only that a proposal has been accepted or rejected. At present, when a proposal is rejected, more reasons might be given, but reasons are certainly not given when a planning authority approves a proposal. Under the bill, an authority will have to give reasons for approval, which will show people why decisions were made against officers' recommendations, for example.

Last week, we spent quite a lot of time discussing schemes of delegation. It has been suggested that some other body, such as the ministers, could improve the system by exercising the wisdom of Solomon and knowing all that was right or wrong with local decisions. It is important that decisions are taken locally. Schemes of delegation will be really important in ensuring that decisions are made locally and do not need to be constantly referred to the centre for improvement. If all those measures are in place, none of the amendments in the group will be necessary.

10:00

Patrick Harvie (Glasgow) (Green): I will begin with the question that Mike Rumbles and Scott Barrie touched on—whether the third-party right of appeal is consistent with the bill and the principles that underlie it, which are that we want people to engage early and that we want more consultation,

participation and engagement. The three amendments are variants on the same proposal, but I think that the basic idea of widening rights of appeal to third parties is consistent with the bill. It means saying to people that although they might technically be known as third parties, they are not in third place in the system.

People who are called third parties are often the ones who are most directly and fundamentally affected by decisions in the planning system. We should almost consider that they are first parties. Giving them fewer rights than the other parties in the process is part of the problem. The bill is partly about rebalancing that. It seeks to bring third parties—communities and individuals—into the system and ensure that their voices are heard. Having a third-party right of appeal is simply a way of making it clear to people that that engagement is meaningful.

Mike Rumbles expressed his confidence that planning authorities throughout Scotland make decisions of the highest quality. Some might call that view generous; I have spoken to councillors who do. I have also spoken to councillors who acknowledge privately that applications for developments are granted permission against the better judgment of the councillors who make the decision, because they do not want to be taken to the appeals stage. It is unreasonable for that stage to exert such pressure in only one direction.

The comparison that I cannot help making is with the court system. If our courts were overburdened and under great pressure to get their work done, it would be outrageous and ludicrous to say that we would solve the problem by denying people a right of appeal. I know that we are not talking about the criminal justice system, but many people whose lives are affected negatively by planning decisions might say that having to put up with a major development that they find damaging to their lives and communities is much like being given a prison sentence. It is reasonable that we make that comparison.

In speaking to the committee previously, the minister acknowledged that the current system, in which only one side has the right of appeal, is unfair. In referring to the system we have used the word unfair, so let us make it fairer. We should remember the strength of feeling that people expressed in the Executive's consultation on the issue. I think that 86 per cent were in favour of third-party right of appeal. We should also remember the strength of feeling that we witnessed in our own pre-legislative public event before the bill began its formal progress through Parliament.

Scott Barrie says that we are wrong to focus on the end of the planning process. People will get to the end of their engagement and objection, the decision will be made and sometimes they will still not get what they want—that is unavoidable. However, they must believe that they have been treated fairly. If people do not get what they want and they feel that they have been treated unfairly because they do not have a right of appeal or because a developer has used their right of appeal, they will be less likely to trust the system and engage with it in the future which, as Scott Barrie rightly said, we all want them to do.

The case for third-party right of appeal is extremely strong. All three amendments that are before us—amendments 126, 130 and 251—have some merit. There are still various issues around, for example, whether specific local decisions and the neighbours affected by them should be referred to explicitly. There are also issues around local authorities that have an interest in particular developments. However, the strongest issue for me is developments that go against agreed development plans. We say that we want a plan-led system. If a development plan is subject to genuine and meaningful public involvement, that will give it status and people will trust and have confidence in it. That plan is a promise. We need to take more care with and be more concerned about decisions that break that promise.

I will vote for all the amendments before us—amendments 126, 130 and 251—in the hope that, as we go through them, a sufficient number of my colleagues will join me to ensure that we pass at least some version of the important third-party right of appeal.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I agree with Scott Barrie's points. I have been nudging him; perhaps he was looking over my shoulder at my notes.

Unfortunately, some of the people who have been involved in the debate about a third-party right of appeal have failed to move on. Sandra White pointed out that she discussed the prospect of introducing a member's bill on the subject back in 2003, but some of the arguments, which are still being made this morning, do not take account of the bill's provisions on engaging people and involving them at an early stage.

If we were discussing only current legislation, we might all be sitting here saying, "Yes, we do want to introduce some sort of third-party right of appeal." However, we are not discussing current legislation. The bill represents an opportunity to engage people and communities in saying what is right for their area and discussing the development of the local plan. The bill strengthens the notification process in cases where the local authority grants an application that breaches the local plan. It is wrong to say that no one will examine cases in which the local authority breaches the agreed plan.

I turn to Mike Rumbles's amendment 126. He started by saying that we should consider the issues on their merits. As a member of the committee who sat through all the evidence on the bill and went on most of the visits, I can say that that is what the committee has done. We examined the issues and listened to the evidence and a majority of the committee agreed with the conclusion that

"the package of measures proposed in the Bill will more effectively address the frustrations felt by many of those who have considered the operation of the current planning system to be inequitable."

Mike Rumbles gave an example about correcting a mistake. I do not know the details of his constituents' circumstances or whether there were mistakes, but I presume that the final decision was taken by a democratically elected local authority. As democrats, we have to trust in the democratic decisions that are taken.

Patrick Harvie made a point about what the term "third party" means to people. To me, someone who is described as a third party is at arm's length. They are not involved in decisions; they are at the fringes of decisions. I repeat that the bill aims to involve communities at an early stage so that they are not at the fringes of the decision-making process but are involved in planning the future of their communities. I want to see that happening right at the outset. I believe that the planning process can be improved for everyone. Like Scott Barrie, I do not want people to feel that it is enough for them to get involved at the end of the process.

I do not support amendments 126, 130 or 251, because they go against the aim of the bill, which is to have up-front and early engagement with communities.

Euan Robson (Roxburgh and Berwickshire) (LD): I am interested in Sandra White's amendment 130, which is so limited that I wonder whether it is worth while. People would have to pass through a series of hoops to get, eventually, to the right of appeal.

As Christine Grahame said, amendment 251, in the name of Donald Gorrie, conveys the spirit of what we would like to happen. However, the minister has made clear that in the bill there will be a process for dealing with local authority interest cases. When my amendment concerning breaches of the development plan was debated, the minister indicated that the issue would be addressed in secondary legislation. I am grateful to her for that. Perhaps she can confirm both points in due course.

Amendment 126, in the name of Mike Rumbles, is interesting, as it has the great advantage of identifying a given group of people. It is difficult to define a community or community body, but those who are notified in the amendment are a distinctive group. The example that the member gave was equally interesting. People feel aggrieved when councillors go against an officer's decision, but the amendment as drafted is not restricted to that circumstance—it is broader. The issue might be worth considering further at stage 3. However, as other members have indicated, we must consider whether it is contrary to the general spirit and tenor of the bill. I am not minded to support any of the amendments, but amendment 126 has the advantage of identifying a clear population of people who might have a right of appeal.

John Home Robertson (East Lothian) (Lab): Mike Rumbles cited the case of a neighbour who feels aggrieved when a local authority grants planning permission for a development next door. We have all heard of such cases a few times over the years in our constituencies—it is a familiar story. The other side of the story is that a happy applicant has been granted permission to build a house next door. This is about making decisions. In an ideal world, it would be lovely to get 100 per cent consensus for or against every proposed development but, as we all know, life is not like that. At the end of the day, where there is no agreement, someone—preferably the local authority, but in some cases the Scottish ministers—must make a decision. It does no one any favours to prolong the process for years with a series of appeals and procedures that delay matters, cost money and are aggravating for everyone concerned.

We understand that the bill is intended to promote better, more widespread community engagement at the earlier stages of consideration of local plans. Let us face it—we all need developments. We all live in houses, and houses are needed for a growing population. We need affordable houses in our communities, landfill sites, infrastructure, roads, shops, power stations and the rest of it, but we tend to want them to be somewhere else. It is human nature for people to want those things to be located in someone else's back yard—out of sight and out of mind. We need sensible discussions on such matters and decent plans, and we need planning applications to be determined once they have been submitted.

As members will gather from the tone of my remarks, I am minded to resist the idea of third-party right of appeal. At least, I was until I received the letter that Mr Charles Hammond of Forth Ports sent to all members, urging us to oppose the amendments. Mr Hammond represents a company that is promoting ship-to-ship oil transfer in the Firth of Forth, regardless of the fact that it poses a risk of pollution and will not create one job in Scotland. His letter illustrates the fact that

planners, planning authorities, local authorities and the Scottish Executive need to be extremely vigilant in dealing with some development companies. We need to be careful, as there are people around who are looking for fast bucks. I will put the letter to one side, but it illustrates the need for vigilance.

I honestly believe that the bill can work, if communities rise to the challenge of engaging in early consideration of plans and if planning authorities are extremely careful, especially when dealing with companies such as Forth Ports.

I fear that amendments 126, 130 and 251 would take us back to the old reactive and fundamentally negative approach to planning. At worst, they could provide a charter for protracted obstruction by third-party objectors.

We have discussed the arguments at some length. I pay tribute to colleagues in all parties who have urged consideration of the third-party right of appeal, which is important and deserves to be considered seriously. However, we must have the courage of our convictions about the bill. It would be a mistake to put a spanner in the works in the form of a mechanism for third-party appeals.

I hope and believe that communities will engage in planning for the future and give positive consideration to the developments that we all need. We should trust local authorities and the Scottish ministers to make the system work. We have discussed the issue at some length. The time has come for the committee to make a decision.

10:15

Dave Petrie (Highlands and Islands) (Con): I have listened to all the arguments on both sides and I remain unconvinced about the third-party right of appeal. However, I am not saying that I will not support the idea at stage 3. I see merits in all three amendments—126, 130 and 251—but I agree with John Home Robertson and Scott Barrie. The aim of the bill is to be comprehensive and wide-ranging, dotting the i's and crossing the t's. If the bill works, there should be no need for a third-party right of appeal.

I listened carefully to Jackie Baillie two weeks ago, and her solution might offer a good compromise. However, an appeal from a third party after a decision has been made would protract the whole process. We could end up making no progress on the current legislation, which would fly in the face of everything that we are trying to achieve. I will therefore not be supporting amendments 126, 130 or 251.

The Convener: There are strongly held views on both sides of the argument on rights of appeal. Everyone is striving to create a planning system that is open, transparent and delivers a sense of justice to people who engage with it. All MSPs have experience of people who have been let down by the planning system. That is why the bill is long overdue.

Amendments 126, 130 and 251 all seek greater fairness and more justice. I understand that desire and I understand why fairness and justice are so necessary. I must say that, in the past, I have seen the attraction of a third-party right of appeal. However, I am now not convinced that such a right would lead to fairness and justice.

If an appeal is unsuccessful, people might believe that the decision is wrong. If they continue to feel aggrieved, that means that the system is at fault. Our responsibility as legislators is to ensure that the system is as good as it can be. We must ensure that people are engaged at the earliest opportunity, that they have a sense of ownership in the planning system and that all stakeholders are willing to engage in the process. If we can do those things, we will ensure a greater sense of fairness and justice.

Offering a right of appeal would not necessarily guarantee a change of decision, and people and communities might feel the same bitterness and resentment that they feel now when bad decisions are made. I therefore do not feel that amendments 126, 130 and 251 are necessary at this stage. The improvements that the Planning etc (Scotland) Bill will make to the planning system will create a better, more open and more transparent framework for the planning process. Everybody will be able to engage in the system as equals.

I hope that the committee reflects on the views of all the stakeholders we have listened to. Patrick Harvie was right to remind us of what those people who engaged with us at the Communities Committee event had to say. However, we also have an obligation not only to all the stakeholders who came to the committee but to those who came to several other planning events held by the committee in the run-up to the introduction of the bill. That includes the planners who deliver the planning service in Scotland, our local authority elected representatives who sit on planning committees, and developers. Everybody's view is valid and each of us has an obligation to weigh up all those views and decide what they think is in the interests of the people of Scotland and their constituents.

I invite Johann Lamont to contribute to the debate on this group of amendments.

The Deputy Minister for Communities (Johann Lamont): Amendment 126 from Mike Rumbles and amendment 130 from Sandra White seek to introduce some form of limited third-party right of appeal into the planning system. Everyone

will be aware of the extended debate that has been held on that issue over the past few years, which has been reflected in some of today's contributions.

It was interesting to hear Sandra White say that she has had to wait some time before we finally got to this discussion. That is because there has been a shift in the debate on planning. We have spent a great deal of committee time wrestling with issues on which we did not expect to spend as much time, because we found that there is far more to planning reform than just the third-party right of appeal, even though it is a significant element of the debate. I am grateful that we have resisted the temptation to see planning reform only in the context of the third-party right of appeal, which is what some people want. This debate has been far broader, healthier and better thought through than the debate over the past weeks and months. We have, therefore, not had the dialogue of the deaf, where people just say, "You're either in favour of development or opposed. You're either a cowboy or a nimby." Such dialogue does not get us far.

Mike Rumbles said that issues should be examined on their merits. I guess that I would say this, but it is absolutely true—I do consider issues on their merits. I do not think that anyone in this room has come swiftly to a position. I certainly have not. The issue has taken a great deal of thought. In the end, you have to judge where best to put your time, energy, resources and entitlements in order to get a planning system that works and does what we want it to do. We are clear that the system needs to be plan-led and should provide certainty, so time and energy have to be put into forming a credible plan-led system. We must recognise that. Planners themselves said that it is critical that they have the space, time and energy to focus on that.

We considered the arguments on rights of appeal at considerable length and we came to the conclusion that there are better ways of restoring fairness and balance and of engaging local people and other community interests in planning. Of course, we recognise the extent and depth of feeling throughout Scotland that the existing planning system does not meet communities' needs. All members will have had direct experience of people feeling disappointed. We also know about the importance of being honest with people about the capacity of the planning system to make people feel better about it. From the outset, we have said that our modernisation measures will strengthen the involvement of local communities and better reflect local views.

There are those who say that anyone who is concerned about development in local communities is a nimby, but our package of proposals for community engagement will give the community a critical role that means it has to get involved rather than just be reactive and resist development, as John Home Robertson said.

Our commitment has led to our proposals to introduce a new framework for consultation and development plans, enhanced neighbour notification arrangements, measures to make inquiries more inclusive, requirements for pre-application consultation and increased transparency in decision making. We also propose to introduce: greater scrutiny of cases that require environmental impact assessment, that represent significant departures from development plans, or that are large-scale bad neighbour developments or key local authority interest cases; improvements to the enforcement regime; and a tighter approach to the current rights of appeal. Those measures will tackle some of the things in the current planning system that people say have let them down.

We must acknowledge the real challenge of proper community engagement. It is not just a tick-box exercise. It is not about identifying one local group, talking to it and then saying, "That's the community done." We also understand that communities have a range of views.

We have always said that our package of modernisation proposals aims to strike a balance that combines better quality public involvement with greater efficiency in taking planning decisions. We need to deliver our economic, social and environmental objectives, which means having the right development in the right place. Sometimes, hard choices will require to be made. That is why our proposals focus on securing meaningful community engagement at the front end of the development planning and application processes. The resources that are available to planning authorities should be focused in that way. That is where they can make a real difference.

There is an alternative approach, which Mike Rumbles, Sandra White and Donald Gorrie have tended towards in their amendments 126, 130 and 251, albeit in a limited form and without embracing it whole-heartedly. That approach would focus community engagement at the end of the planning application process and give community interests the ability to challenge the determinations of planning authorities. The price of that would be not only the creation of uncertainty and delay but the further concentration of decision making at the centre rather than at local level, thereby unbalancing the system.

We need to consider the frustrations of those who see the decisions of local authorities being second-guessed at appeal and of those who are frustrated by the decisions that their local authority takes. In any system, it is not possible to satisfy

both sets of people. Clearly, those who argue for and against third-party right of appeal have diametrically opposite concerns about where the system has let them down.

Third-party right of appeal would reduce the focus on early engagement, which we see as key to a successful planning system in which trust can be built. Indeed, one could argue that third-party right of appeal would create the perverse incentive to revert to tick-box engagement. From the local authority perspective, the question would be, why should we spend huge amounts of time in encouraging good engagement at the local level if, at the end of the process, someone can simply lodge an appeal? Third-party right of appeal would serve only to reinforce the reactive role.

Indeed, having a third-party right of appeal would require us to re-examine the notification process. We have said that we recognise the importance of local authority interest cases, for example. We have also said that the notification direction system, with the force of legislation behind it, will address that issue. The committee took evidence on that. Under Sandra White's amendment 130, appeals made under the third-party right of appeal would be made according to a list of categories, a number of which are already involved in the notification system. Under the proposed system, a notification would be made, the minister would look at it and possibly clear it, only for an appeal to be made. Such circular procedures would create a huge amount of churn and extra work in the system. The Executive does not support amendments 126 or 130. I ask the committee to reject them and the consequential amendments 201, 218, 206 and 219.

Donald Gorrie's amendment 251 is broadly the same as his amendment 192, which the committee rejected last week. The only difference is the terminology: he has substituted the word "appeal" for the word "review". He still seeks to refer cases to ministers before a decision is issued. Although amendment 251 is about appeals against decisions, the current drafting appears to introduce a means of ministerial scrutiny that would duplicate existing notification provisions. In particular, the drafting follows the changes that we have proposed for the handling of local authority interest cases and development plan departures, but is more limited in scope. Only major developments that involved either local authority interest or breaches of the development plan would be defined as significant. The suggested list of issues that ministers may consider in deciding whether to hold an inquiry does not appear to differ from the planning assessments that we carry out at present when applications are notified to ministers. It is entirely unnecessary to add a further formal procedure to the system, especially one that adds no improved scrutiny.

I note that the appeal role would be limited to community councils, bodies or trusts with the relatively narrow focus of enhancing the amenity of their area, but none of those is truly representative of an area, as Donald Gorrie acknowledged. His approach is not inclusive. We are fully committed to our proposals to enhance the scrutiny of local authority interest cases and development plan departures. Amendment 251 would add nothing to that commitment, so I ask the committee to reject it.

I have a couple of other points. I will be brief. First, Mike Rumbles raised the issue of neighbour notification. He will, of course, be aware that we have improved it to give people more confidence in the process. Although we share a commitment to putting in place a system that is fairer and more effective, our ideas about the role of councillors are different. The democratic authority of councils to make decisions at the local level is involved. Sandra White also picked up on the issue. In cases where the decision is made by a planning official, a problem arises if elected members go against it. That said, people's faith in officials is not necessarily shared across the board.

Sandra White argued for a limited right of appeal, but all the examples that she identified would be subject to enhanced scrutiny as a result of the bill. For example, a major retail development that represented a departure from the development plan would have to be notified to ministers.

10:30

Members should acknowledge that we have worked to limit the first-party right of appeal. We are advised that it is not possible to eliminate that right, but we have put in place conditions that will keep matters local in certain circumstances, prevent applicants from making a completely new case on appeal—as has happened—and reduce time limits for appeal, to ensure that developers engage at an early stage. We are exerting increasing pressure on developers, to ensure that they rise to the challenge of community engagement.

Members have said that people sometimes feel that they have been treated unfairly. The test of the bill is whether it will be effective and do what we want it to do. Will people feel that they have been treated more fairly? If a local authority takes a decision that the developer appeals to the minister, who finds against them, they may feel as if they have been treated unfairly. If the same minister is appealed to by a third party, whose appeal is also rejected, I do not think that, somehow, that third party is going to feel that they have been treated fairly. The reality is that people can feel disappointed and let down simply

because their arguments are not accepted, but that is different from the process being unfair.

In the bill, we try to ensure that communities will be engaged at an early stage and that they will be involved in drawing up development plans. The primacy of the development plan will create certainty and ensure that proposals for a new development that departs from it cannot appear later.

I acknowledge that members are still arguing for a third-party right of appeal, but our balanced package of proposals addresses their concerns. We acknowledge the role of communities and the hard job that people in the planning system must do when they decide where to put the developments that we all need but nobody wants. Members should reject the amendments, which would simply extend the process, and work on the package of proposals, to ensure that communities can engage at the stage when they can make a difference.

Mike Rumbles: We have had a fascinating and constructive debate, which has teased out misunderstandings. I am disappointed by my own inability to get across the purpose of amendment 126, which I think has been misunderstood by Christine Grahame and Tricia Marwick.

Amendment 126 is not too broad in scope; it is the reverse. I expected members to argue that the amendment is too narrow in scope, because it would limit the right of appeal to people who have received notification of the application and have made representations to the planning authority. Not even everyone who received notification of the application would have the right to appeal. Far from being too broad, the amendment is laser-beam narrow in scope. As Euan Robson acknowledged, it identifies a particular group of people.

Amendment 126 will be put to the vote before the other amendments in the group and I urge members to support it. Their votes would take nothing away from the amendments that Sandra White and Donald Gorrie lodged.

On Christine Grahame's point, I did not say that the example that I gave was about a mistake by a planning officer; I said that although all the officials had recommended that the application should not be approved, it had been approved. That brings us back to a fundamental point. I am not talking about battles between officials and democratically elected councillors; I am describing a cry for help when a mistake has been made and people say, "Can someone else please just look at the decision?"

Scott Barrie said that the proposed approach is about closing the stable door after the horse has bolted. Cathie Craigie agreed with him. However, Scott Barrie did not seem to recognise that mistakes—or, if you like, bad decisions—are made. We all make bad decisions. I have made bad decisions and mistakes and I am sure that Scott Barrie has. We all have, because we are human beings and human beings make mistakes. It is not good enough to say, "We've got a super-duper system." It probably will be a super-duper system, but that is not enough.

I am trying to make the committee consider the whole issue. It is not enough to say, "We want to front-load everything and therefore we can't look at the end result." We have to consider the system as a whole. As Patrick Harvie said, when people go through the whole process and come to the end result, we do not want them to think, "I was not heard. They didn't understand and nobody else looked at the decision."

I agree with everything that Patrick Harvie said. I was delighted to hear, once again, the voice of reason from him. He talked about appeal pressure existing in only one direction. That is an important point because, as I hope we all know, the Scottish Executive inquiry reporters unit sees 1,200 appeals every year—there were certainly between 1,150 and 1,200 last year. Of course, those appeals all relate to the applicant, because neighbours and others cannot appeal. Patrick Harvie hit the nail on the head when he implied that the term "third party" is a bit anoraky. We are talking about real people—Mr and Mrs Smith or Mr and Mrs Jones—and not about people in the abstract. That is why I gave an example, but I am sure that our mailbags are full of examples.

Both Cathie Craigie and the minister said that they have faith in our democratically elected councillors but, again, I say that this is not meant to be a battle. It is not a case of saying, "They are democratically elected, therefore their decisions stand." We cannot argue with that. I am simply saying, "Can we have somewhere in the system where somebody casts an eye over decisions again?"

I liked John Home Robertson's phrase "a happy applicant". It is suggested that people are not happy with the decision, so they want an appeal to overturn the decision. Of course, every decision is the right decision for one person and the wrong decision for someone else. I think that that is the point that John Home Robertson was trying to make. He made it quite well when he talked about the happy applicant, but that is not the point that I am making. I do not expect that every appeal should overturn the decision. In fact, I imagine that many decisions would be upheld. The point is that people should feel that we have the best system that we can get. It is not a question of one person winning and one person losing.

I understand Dave Petrie's point and I would

agree with him except for one thing. If we follow his logic, appeals would not be necessary at all. That is what he was saying. I thought, "Crikey, wait a minute. If that's the case, why do we have appeals at all? Why does the inquiry reporters unit deal with 1,200 appeals a year if appeals are not necessary?" I would understand the argument that we do not need a third-party right of appeal if the people who make that argument said, "We do not need appeals because the system is so good." I am challenging the system. Whatever system we put in, it will not be infallible. Mistakes are made because we are human beings. Through my simple amendment, I argue that those people who are most directly involved should have the feeling that somebody else cast an eye over the decision.

The convener's contribution at the end of the debate was very good. She hit the nail on the head. We are gathered around the table for today's meeting, whether or not we are members of the committee. I am a substitute member, but I have never been called to attend. I am looking forward to my first attendance as a substitute.

John Home Robertson: That is a threat. [*Laughter.*]

Mike Rumbles: I thought that the convener made the point well that we are all here to try to do the best for the system. That is why I am making an appeal. I feel that 99 per cent of the bill is good but that we are missing something at the end of the process.

The minister talked about having great faith that we would get a good system. I hope that she is right and that we have a really good system. However, this is not rocket science. In almost all walks of life, including in our own Parliament, when we set up systems we establish systems of appeal. Why do we set up systems of appeal? We do so because mistakes are made. Nobody is infallible. It is not a battle between the democratic authority of our councillors and somebody else; it is about putting in place an appeal process that ensures that we get a good system. It is not about front-loading as opposed to back-loading. Front-loading is all well and good, but let us consider the whole system in the round and ensure that it is as good as it can be. Amendment 126, narrow as it is—it is laser-beam narrow; I could not make it any narrower—intends to achieve that, so please support it. By all means support other amendments, but I ask members to support amendment 126.

The Convener: The question is, that amendment 126 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 126 disagreed to.

Amendment 130 moved—[Ms Sandra White].

The Convener: The question is, that amendment 130 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 130 disagreed to.

Amendment 251 moved—[Donald Gorrie].

The Convener: The question is, that amendment 251 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)
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)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)

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

Amendment 251 disagreed to.

Amendments 201 and 218 not moved.

The Convener: Amendment 202, in the name of Donald Gorrie, is in a group on its own.

Donald Gorrie: I hope that members can temporarily erase third-party right of appeal from their mind, because amendment 202 addresses a totally different issue. It deals with the situation when the local community and the planning authority are against a development and the planning authority turns down the application, but there is an appeal and the reporter who is appointed comes out in favour of the development against the wishes of both the council and the local community. That issue, which creates intense anger, has been raised with me quite often by people in different parts of the country.

I agree with the minister that we should accept the bona fides of councillors, but in this case the wishes of the local, democratically elected council and the perceived wishes of the local community were overridden by one unelected but appointed person, who is no doubt professional but is subject to making mistakes like anyone else. The situation has aroused great anger.

My suggestion in amendment 202 is that when a reporter at a public inquiry is minded to allow an appeal against a refusal and the evidence shows that most of the local community and the council and the planning officials are opposed to a development, the minister should appoint a more senior reporter to review the evidence. If that person thought that there was a case for the appeal to be reconsidered, another senior reporter would be appointed to undertake a proper inquiry and take evidence. The community and the council could then make their views known.

Amendment 202 is an effort to strengthen the powers of local, democratically elected councillors and the community against a reporter's rogue decision. I hope that the committee will think that there is merit in my proposal which, as I said, is different from the third-party right of appeal. If the person who is appealed to in an appeals system makes a serious error, there must be a way of putting that right and giving the community and the council another shot at persuading a reporter that they are in the right and the developer is in the wrong. I hope that, regardless of previous arguments, the committee will seriously examine the issue and support amendment 202.

I move amendment 202.

10:45

Scott Barrie: The issue that Donald Gorrie raises is something that we have all come across, which is when an appeal is upheld that appears to go against planning officials' recommendations and a planning committee's decision. However, I think that it is going a bit far to say that upholding such an appeal is a "rogue decision". There must be a good reason for upholding an appeal. As I said earlier, the point is that such surprises should not be forced on communities if the bill is enacted and works as intended.

I am probably repeating a point that I made earlier, but the issue is about the schemes of delegation. If there are proper schemes of delegation in which local decisions are taken at the local level, we will not need the additional appeals system that the amendment proposes. Instead of erasing the current planning system from our memory, the amendment is trying to address the faults in that planning system without taking into account the planning system that the bill proposes.

Tricia Marwick: Like Christine Grahame, I have a great deal of sympathy for amendment 202. I think that we all know where Donald Gorrie is trying to get to, but I have difficulty with what the amendment proposes. It would amend section 18 of the bill to insert new subsections (10) to (14) into section 48 of the 1997 act, under which if a reporter were minded to allow an appeal, an appointed person who was more senior than the reporter would be appointed to determine whether there should be an appeal, and a further appointed person would carry out the appeal. My arithmetic is not great, but that suggests to me that at least another two reporters would consider the original reporter's appeal decision. Three different reporters could consider the same appeal within a few months—that simply does not make sense.

Although I have a great deal of sympathy for what Donald Gorrie is trying to achieve, the way that he has gone about things in amendment 202 would not help the situation. My concern is that what he proposes would tie up the reporter system in appeal, counter-appeal and further appeal for a considerable period.

Furthermore, Donald Gorrie has not told us how he would find evidence that the majority of a local community was opposed to a development, as Christine Grahame has mentioned. Would referenda be used? Although I am sympathetic to his aims, I simply do not think that amendment 202 is sensible, so I will not support it.

Johann Lamont: Amendment 202 seeks to alter the operation of the national appeals system by introducing a further layer of consideration in cases in which an appointed person has decided to uphold an appeal and grant planning permission. Donald Gorrie has highlighted the frustration that some people feel with an appeals system that allows an unelected person to make a decision that is contrary to the view at local level.

However, I am not convinced that having two unelected people re-examine that decision would give people more confidence in the system. The solution lies in building confidence in the appeals process and what the reporter has to do rather than in arbitrarily introducing an element of seniority into the system.

We have considered in detail the measures that are required to restore balance and fairness to the appeals system and we believe that that will be achieved by a package of linked reforms. We do not think that amendment 202 would help because it would introduce a requirement to allocate cases on the basis of seniority. There is no objective need for such a system, which would complicate the delivery of the entire appeals service.

Donald Gorrie's proposal has the potential to compromise the important requirement that in future all development applications should be front-loaded, which is central to the white paper reforms. The intention is to ensure that the scheme that was considered by the planning authority and the representations that were made to it by the community are what should be reviewed in an appeal. Amendment 202 would run counter to the intention to reserve the inquiry process for those highly complex elements of a development proposal for which an oral process is essential.

It is not the case that the reporter would make an arbitrary decision that the community would be disappointed by. A reporter is charged with the responsibility of taking into account all material considerations, which include the views of the community and whether the community is divided or speaks with one voice on the issue, and must give reasons for their decision. Amendment 202 would not achieve what Donald Gorrie wants it to achieve and it would add a further layer of complication. I do not accept that it would give people more confidence in the system, so I urge the committee not to support it.

Donald Gorrie: I will deal with Scott Barrie's position first, which brings us back to the argument about rear-loading rather than front-loading. The fact is that, even if the system works correctly, there is a great deal of pre-application consultation, and the council—after doing all the right things—comes out against a development because it thinks that it is a bad development, the reporter can still come along and take a different view. Quite often, the reporter's view is highly technical and legalistic and has nothing to do with the merits of the case or the views of local people, and the council's decision is overturned. Amendment 202 is not an endeavour to subvert the whole process; it is an attempt to strengthen the democratic aspect of the planning system.

I do not accept the argument that my proposal would tie up too many planning officials. The three officials involved would not be tied up all at once. One person would consider the appeal. Under my suggestion, another person would subsequently assess whether the appeal decision was good and a third person would rehear the appeal. At any one time, there would be only one official involved. If anyone can come up with a better suggestion on how people could appeal against reporters' decisions, I would be interested to hear about it.

In the legal system, superior judges in the courts deal with an appeal against a lower judge and then judges who are superior still—in the House of Lords, Europe, heaven and in all sorts of other places—make further decisions. There is a sort of hierarchy. If there is a better way, that should be done, of course. If you want to have half a dozen MSPs, bus drivers or anything else, you should say so. However, I do not see how it is possible to have a system of appealing that is better than one that involves officials who are higher up the hierarchy—and, presumably, better skilled and better informed—than the person who has been appealed against. The argument that the minister makes—that such a system would reduce people's respect for the planning system—is simply untrue. At the moment, people are incandescent about situations in which the local council and community are united against a planning application yet it still goes through. The argument that we cannot identify who makes up the local community does not work. There are local community organisations—some communities are sufficiently organised to have a community council—that can be used to gain a sense of the views of the local community. On the basis that it is difficult to find out what a community thinks, we would have no democracy at all. The thing is for people to get off their backsides and talk to people in the community; that is how to find out what the community thinks. I do not accept that argument.

I find the arguments against amendment 202 to have a strongly antidemocratic tendency and I regard them with extreme disfavour. I can see that the third-party right of appeal is an issue that people can have differing views about, but I do not see how anyone can be genuinely against having a sensible appeals system to deal with situations in which a reporter comes to a decision that the local community and the council think is entirely wrong. I think that the situation should be reviewed and, therefore, I will press amendment 202.

The Convener: The question is, that amendment 202 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)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Robson, Euan (Roxburgh and Berwickshire) (LD)

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

Amendment 202 disagreed to.

The Convener: Amendment 203, in the name of Christine Grahame, is grouped with amendments 204, 205, 207 and 217.

Christine Grahame: I will speak mainly to amendment 207, which is the substantive amendment in the group.

The issue that I want to discuss was one that a minority of the committee—Patrick Harvie, Euan Robson and me—felt was of concern. Paragraph 114 of our stage 1 report says:

"A minority of the Committee is concerned at the proposal to give Scottish Ministers the power to decide the format of the appeal, given the concerns expressed by the Law Society and Scottish Environment LINK. In particular those members believe that removing the right of applicants and appellants to select the form of hearing will undermine their confidence in the system."

The issue is technical and I am grateful to the clerk for reminding me of the technical maze that is involved. Reference is made to a schedule in the bill that deletes from section 48 of the 1997 act subsections (2) and (4). Subsection (2) says:

"Before determining the appeal the Secretary of State shall, if either the appellant or the planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose."

The deletion of that provision will mean that there will be no opportunity for the other parties to select the method of appeal; it will be the Scottish ministers who decide. My amendment is designed to enable the minister to put on the record a response to the recommendation of those of us who were concerned about the change to the right of applicants and appellants to select the form of hearing and put their appeal to the Scottish ministers.

I know that my explanation has not been very clear, but the thrust is that, under the bill, the ministers will decide the form of the appeal and the appellant will have that opportunity taken away, to put it in a rather clumsy nutshell.

I move amendment 203.

11:00

The Convener: Do any members wish to speak? No? Christine, you could not have been that unclear, or I am sure that members would have been seeking clarification from you.

Johann Lamont: The challenge of the clumsy nutshell is an image that will live on.

Christine Grahame: As opposed to the laser-beam amendment.

Johann Lamont: Indeed.

These linked amendments seek to restore the status quo in appeals so that Scottish ministers would continue to be required, before reaching a decision, to afford the opportunity of appearing before and being heard by a person appointed by them—in other words the right to a public local inquiry, which can, currently, be sought by the local authority or the appellant.

The measures that are required to restore balance and fairness to the appeals system involve a package of linked reforms. Central among those is the intention to reserve the formal planning inquiry process for those cases, or elements of them, where the subject matter cannot be addressed through written submissions or through greater use of hearings, which are less formal than inquiries and thus more accessible to the community. We believe that these amendments would undermine that purpose by frustrating the objective of ensuring that people who are interested in a development proposal are able to make their views known and have them taken into account without being intimidated by the process.

Of course, reflecting on the interests of the community and examining the material considerations, ministers would still be able to have a public local inquiry, but they would not have to do so in every circumstance. We believe that that is in the interests of creating a system whereby people who have concerns are able to have their voices heard through a less formal process. The Executive's intention is positive with regard to engagement with the process and we hope, therefore, that the committee will reject the amendment.

The Convener: Christine Grahame, you have a chance to wind up the debate eloquently.

Christine Grahame: I do not think that eloquence is in my dictionary today.

I thank the minister for a full response and seek leave to withdraw amendment 203. It is my intention not to move the related amendments. I will reflect on what the minister has said.

Amendment 203, by agreement, withdrawn.

Amendments 204 to 206, 219 and 207 not moved.

Section 18 agreed to.

The Convener: At this point, we shall have a short comfort break.

11:04

Meeting suspended.

11:15

On resuming—

Section 19—Duration of planning permission and listed building consent etc

The Convener: Amendment 147, in the name of the minister, is grouped with amendments 148, 194, 195 and 199.

Johann Lamont: Amendment 147 will ensure that the reduction in the statutory time within which development must begin that is attached to some planning permissions will not apply retrospectively. Planning authorities can specify the period within which a development that has been granted planning permission must begin. Where they do not so specify, a statutory time limit of five years applies. Section 19 of the Planning etc (Scotland) Bill will replace the existing provision in this regard and reduce the statutory period to three years. That will avoid some of the uncertainty over the time when extant planning permissions might be implemented.

Without amendment 147, permissions that are granted prior to the commencement of section 19 of the bill could suddenly have their period for starting development reduced from five to three years. That would mean, for example, that permissions that previously had two years left to run would lapse rather abruptly. To avoid unfairness to developers who planned on the basis of the existing time limit, and to avoid a glut of planning applications for replacement permissions or extensions to time periods, we consider it appropriate to amend the bill to avoid any such retrospective effect.

Section 20 of the Planning etc (Scotland) Bill will replace section 59 of the Town and Country Planning (Scotland) Act 1997, on outline planning permissions, with new provisions on planning permission in principle. Amendment 148 will ensure that the new provisions that will be introduced by section 20 do not apply to outline planning permissions that have been granted prior to the commencement of section 20. The terms of those outline planning permissions will be unaffected by the change. There will therefore be a period during which procedures for applications for approval of reserved matters in relation to outline planning permission will exist alongside the new procedures. We believe that that is the most effective way to handle the transition to the new procedures. I therefore recommend that amendments 147 and 148 be accepted.

Amendments 194, 195 and 199 will simply correct an error in the bill. Section 41 of the Town and Country Planning (Scotland) Act 1997 distinguishes between conditions on a planning permission that specify time limits within which aspects of a development must be carried out—for example, phases of development—and conditions that specify the time within which the development as a whole must begin. It is possible, for example, that the implementation of a planning permission is started on time but that subsequent elements of the development fall behind times that are specified in the permission; therefore, there is a need to differentiate between the two types of time limit and to specify what happens if they are not met.

The bill will amend the 1997 act so that conditions on time limits for starting development overall will no longer be attached as conditions. There is therefore no need to differentiate between the two types of condition on time limits. We thought initially that we would need to retain and amend that distinction in relation to conditions on planning permissions in principle that prevent a development from commencing without details having been approved—section 21 of the bill was drafted accordingly. However, on further consideration, we have concluded that the distinction is not necessary.

Amendments 194, 195 and 199 will delete the change in section 21 of the bill, make a consequential amendment to a later provision in that section of the bill, and repeal the section of the 1997 act that distinguishes between the two types of condition on time limits. I therefore recommend that amendments 194, 195 and 199 be accepted.

I move amendment 147.

The Convener: As no committee members wish to speak, I ask the minister whether she has anything to add to wind up the debate.

Johann Lamont: No.

Amendment 147 agreed to.

Section 19, as amended, agreed to.

Section 20—Planning permission in principle

Amendment 148 moved—[Johann Lamont]—and agreed to.

Section 20, as amended, agreed to.

Section 21—Further provision as regards duration of planning permission etc

Amendments 194 and 195 moved—[Johann Lamont]—and agreed to.

Section 21, as amended, agreed to.

Section 22—Planning obligations

The Convener: Amendment 208, in the name of Patrick Harvie, is in a group on its own.

Patrick Harvie: Amendment 208 seeks to delete from section 22 the possibility of unilateral planning obligations. The amendment was prompted partly by the feeling that an obligation cannot be unilateral; an obligation is placed on one party by another. If we are talking about unilateral action by a developer, we are talking about a voluntary undertaking—that is, something that it decides to do.

The purpose of planning obligations is to ensure that there is reasonable negotiation about the value of the work that is undertaken. A developer that proceeds with work unilaterally can have no confidence in the value that the planning authority or the local community will place on it. The community might feel confused or threatened by the fact that the developer is proceeding with something that the community has not chosen or backed and some planning committees might find themselves in a difficult situation in determining the balance of opinion on the value that should be attached to the work.

At stage 1, which seems a long time ago, I repeatedly asked witnesses from all the various stakeholders what value there is in unilateral obligations. I did not receive a convincing answer from any of them, so I look for an answer from my fellow committee members or, perhaps, the minister.

I move amendment 208.

Johann Lamont: Amendment 208 seeks to restrict planning obligations to those that are agreed with the planning authority, and to remove the proposal that developers and landowners may unilaterally propose planning obligation terms. On the definition, it is possible for someone to place an obligation on themselves; when they undertake something, they will then be obliged to carry it out if they sign up to the agreement.

In England, where the option to propose a unilateral obligation is available under the Town and Country Planning Act 1990, such obligations are often put forward by developers for use at appeal hearings. They can be a useful means of resolving a stalemate in negotiations—for example, when there is a dispute with the planning authority over conditions, or to meet an objection on a planning appeal. Unilateral undertakings can allow the applicant to enter into an obligation to deliver certain benefits, typically in relation to improved infrastructure such as roads, which can then enable planning permission to be granted by the planning authority.

Our reforms in the Planning etc (Scotland) Bill aim to make the planning system in Scotland fairer, more efficient and more effective. Unilateral obligations will not always be the most appropriate course of action, so we will issue guidance on their use.

By removing from the bill the option of unilateral planning obligations, amendment 208 would remove a valuable avenue for achieving an equitable conclusion to a planning application that might otherwise remain in stalemate. I therefore ask the committee to reject the amendment.

Patrick Harvie: I accept the minister's comment that unilateral obligations might be a useful way of resolving a stalemate, but I am still concerned that they might resolve it by giving too much flexibility on one side and not enough on the other, so I will press the amendment. I am sure that there will be another glorious defeat, but I might come back at stage 3 with another stab at the issue in relation to the guidance that the minister intends to produce.

The Convener: The question is, that amendment 208 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

I am sorry, but we will need to rerun that vote as one member failed to vote.

Scott Barrie: Was it me? I pressed my button.

The Convener: The question is, that amendment 208 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

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

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

Amendment 208 disagreed to.

The Convener: To avoid the need to rerun any other votes, I remind members that they should

wait until the division has been called before they press the button. They should then ensure that they have pressed the button and that the little light has come on.

Amendment 209, in the name of John Home Robertson, is in a group on its own.

John Home Robertson: Amendment 209 is a probing amendment that was suggested by the Royal Town Planning Institute in Scotland. The amendment would insert a specific provision for the legitimacy of contributions in kind—in the form of land—in the definition of what may be required as a planning obligation.

As the bill stands, subsection (3) of section 22, which would substitute section 75 in the 1997 act, refers to payments by developers to go towards infrastructure costs for roads, schools and so on. The term "payment" might normally be assumed to refer to a financial transaction. In some cases, it might be entirely appropriate for the developer to make a contribution in kind, such as in the form of sites for affordable housing—an issue that is close to my heart and which I will continue to remind the minister about from now until doomsday or, preferably, until she sorts out the problem.

It may well be that the term "payment" in subsection (3) covers such contributions in kind in the form of land. If that is the case, amendment 209 is unnecessary. Perhaps the minister can clarify that point. The amendment is a probing amendment.

I move amendment 209.

Johann Lamont: Amendment 209 seeks to provide that a possible condition for inclusion in a planning agreement could be that the title to land or property will be transferred. For example, a developer might be required to transfer land to a registered social landlord for use for affordable housing or to provide a school building for a local authority. Such transfers already occur under existing section 75 agreements and local authorities already have general powers to enter into agreements to acquire land.

In principle, as part of our aim to make the planning system more streamlined and efficient, we wish to avoid inserting unnecessary lists of conditions into primary legislation. Amendment 209 would make no material improvement to the operation of the planning system. Therefore, I ask the committee not to support it.

The Convener: I invite John Home Robertson to wind up the debate and to say whether he will press or seek to withdraw amendment 209.

John Home Robertson: I am grateful for that explanation. I am happy to seek to withdraw the amendment.

Amendment 209, by agreement, withdrawn.

Section 22 agreed to.

Section 23—Good neighbour agreements

The Convener: Amendment 196, in the name of Sandra White, is in a group on its own.

Ms White: Amendment 196 is a probing amendment, the purpose of which is to seek clarification from the minister. Like Patrick Harvie—who had concerns about the term "unilateral obligation"—I have concerns about the term "obligation". As members will recall, when I was a member of the committee, I looked forward to seeing the provisions on good neighbour agreements as I had lots of questions to ask about those. The resolution in the bill is a good way of going forward, but I fear that the term "obligation" will give false promises and false hopes to the communities who enter into such agreements. That is why I propose the word "contract" as an alternative.

Perhaps the minister can clarify whether community bodies can actually enter into a contract. I have suggested use of the word "contract" because if community bodies can enter into a contract under legislation, it would be much stronger and would give them more rights than an obligation. Under proposed new section 75F, on good neighbour agreements and appeals, community bodies can appeal if they have entered into the obligation or contract.

I move amendment 196.

11:30

Johann Lamont: Before I comment on amendment 196, I will take a moment to clarify how I foresee good neighbour agreements operating. The general approach to using good neighbour agreements will be set out in guidance and secondary legislation—we will consult on those measures. The bill creates just the basic framework for their use. It would be fair to say that it is a stronger position than a contract.

Good neighbour agreements are one way in which communities can have a stronger say in how a development will operate. They will do that by setting some ground rules about how a particular development will proceed. That might include the way information about a development can be provided to the community and it might help to resolve disputes without necessarily involving the planning authority. A good neighbour agreement might enable more information to be given to the community about how a site operates, what materials are stored, and what procedures arise in the event of an emergency, or perhaps allow access to the site so that there is greater

understanding about the activities that are taking place.

It is crucial that an agreement will, once it has been registered, be binding on successors in title. Good neighbour agreements are therefore not about developers paying lip service to standards before they receive planning consent; the agreements would be enforceable by the community concerned.

Good neighbour agreements are just that—they cannot be imposed on either party and will not be appropriate in every case. However, where there is a shared commitment to develop a framework for operating a site—perhaps through pre-application consultation—the provisions should have real potential to ensure that communities get to play the stronger role that many would like in developments that affect them.

It is not about the community taking over the enforcement responsibilities of the planning authority. The planning authority should continue to ensure that, in granting permission for a development, appropriate conditions are in place to ensure that the development can proceed without unacceptable impacts on the community or the environment. The responsibility for enforcement will remain with the authority. The bill adds to the tools that will be available to the planning authority to ensure that enforcement measures are effective. I propose to write to the convener during the next week to set out in greater detail how I envisage good neighbour agreements will work and the circumstances in which they might be used.

Amendment 196 seeks to alter the terms of our provisions on good neighbour agreements to refer to "contracts" rather than "obligations". Although that seems on the face of it to be a minor technical adjustment, it is not one that we can support. Although all contracts will be obligations, not all obligations will be contracts. Contracts are agreements that are entered into between two parties and are enforceable only by those parties against each other. We want good neighbour agreements to have the potential to be enforceable not just against the original parties that enter into them but against their successors in title. The bill describes the provision for a person, by agreement, to enter into an obligation, which is the correct term to use since it includes responsibilities falling upon future owners of a site, not just those who were originally party to the agreement. I therefore recommend that amendment 196 be rejected.

Ms White: I take on board what the minister said, and she has clarified the points that I asked about. I will not press amendment 196 today, but I hope to come back with an updated amendment at stage 3.

Before I finish, I would like to thank the members and clerks for all the work that they have done to help me to understand and lodge amendments.

Amendment 196, by agreement, withdrawn.

The Convener: Amendment 197, in the name of the minister, is grouped with amendment 198.

Johann Lamont: Good neighbour agreements are intended to improve communication between communities and those who undertake developments. Although they are voluntary arrangements, once they are recorded in the register of sasines or registered in the land register of Scotland, they will be binding on successors.

It is important that the agreements are seen to be fair, and that arrangements for entering into them are clear to all parties. Amendment 197 will ensure that one party to a good neighbour agreement cannot seek to increase the obligations on another party once the agreement has been made.

We have confirmed that the parties to a good neighbour agreement should have equal rights of appeal. It is equally important to ensure that one party is not, having entered into the agreement, in a position to increase the obligation on another. That is why we have lodged amendment 197, which will prevent any unreasonable shift in the terms of the agreement. I therefore urge the committee to accept the amendment.

Amendment 198 is intended to ensure that parties who have entered into a good neighbour agreement have equal rights of appeal when issues about modifying or discharging the agreement arise. At present, the bill provides that changes can be made only by agreement between the main parties or, where agreement cannot be reached, following application to the planning authority. The decision of the planning authority or its failure to respond can be challenged by appeal to Scottish ministers, but only by the applicant and not by the other party. The committee was concerned about that at stage 1; I am grateful to members for signalling concern about the bill's current drafting. It is right that both parties to a good neighbour agreement should have equal rights to appeal, so amendment 198 will deliver that. I therefore recommend that the committee accept amendment 198.

I move amendment 197.

Amendment 197 agreed to.

Amendment 198 moved—[Johann Lamont]—and agreed to.

The Convener: Amendment 210, in the name of Donald Gorrie, is in a group on its own.

Donald Gorrie: This is not a third-world-war

type of amendment, and I hope that the committee will think that it is worth while.

Amendment 210 seeks to include within good neighbour agreements projects or opportunities to make better use of open space, and to keep or improve sports facilities. Most urban areas have experienced loss of open space to pressures of housing, and they have experienced loss of sports facilities. We should therefore make it as easy as possible for communities to retain their open spaces and sports facilities and to develop them further.

There are very good examples of unused open spaces being developed for play activities such as sports and children's playgrounds, or just to be attractive open space. I recently, on behalf of an organisation to which I belong, gave out plaques to acknowledge good developments in Broomhouse in Edinburgh, Stevenston in Ayrshire—where a very good skate park has been created—South Ronaldsay and Tiree. The issue affects urban and rural areas. We should make it easier and more attractive to safeguard and promote good open spaces and sports facilities.

Amendment 210 would have councils notify people when a good neighbour agreement has come into effect. The groups or individuals that are interested in making better use of open spaces and sports facilities could then get together and work to achieve that. I hope the amendment will commend itself to the committee.

I move amendment 210.

Johann Lamont: First, I want to make it clear that I did not at any stage say that we would not be able to define the community or would not be able to identify where the community was. I recognise the importance of communities throughout Scotland in all their diversity, which is why they are at the heart of the process, through community engagement. It is not impossible to do that. It is important that community engagement is recognised as engagement with the community in all its diversity and that, as was mentioned earlier, a tick-box approach is not taken.

Amendment 210 seeks to restrict the potential loss of open space and recreational facilities by a process of encouraging community bodies to enter into good neighbour agreements. Of course, good neighbour agreements are seen as an agreement between an applicant and the community in relation to a particular development, but the appropriate means of controlling or restricting the loss of recreational land and facilities is through the development plan, which will give communities and the land greater protection than will a good neighbour agreement.

Draft Scottish planning policy 11, which covers provision of open space, is currently out for consultation. It will require planning authorities to take a strategic approach to protecting and enhancing open space provision by ensuring that authorities audit the facilities in their area, develop a strategy for use of open space and protect it in the development plan, the creation of which will, of course, engage the local community. Amendment 210 would undermine that strategic approach and fails to recognise the important role that an up-to-date development plan will have in protecting valued and functional open space. In the light of that and the terms of draft Scottish planning policy 11, the amendment is unnecessary and I recommend that members not support it.

Donald Gorrie: I am obliged to the minister for the enlightenment that she has provided on the issues, but I still feel that the idea is worth promoting. It may be that if amendment 210 falls today, a similar amendment could be lodged at stage 3 to ensure that, under development plans, councils pay particular attention to the issue. Having open spaces, sports facilities and constructive things for young people to do is very much at the heart of the solution to problems in our communities. Therefore, such matters should get preferential treatment rather than be covered by the rules and laws in general. It is a helpful idea, so I will press amendment 210.

The Convener: The question is, that amendment 210 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

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

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

Amendment 210 disagreed to.

Section 23, as amended, agreed to.

Before section 24

The Convener: Amendment 149, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 149 will give planning authorities the power to issue a fixed-penalty notice as an alternative to prosecution for certain breaches of planning control when a developer has failed to comply with the conditions

of either an enforcement notice or a breach of condition notice. Planning enforcement is often viewed by the public as a lengthy and unwieldy process and we are committed to introducing measures to encourage more effective, proactive, efficient action. Although prosecution will still be the first option for major breaches, fixed-penalty notices will give planning authorities a fast, effective alternative to deal with the majority of such cases.

I move amendment 149.

Patrick Harvie: On the face of it, the proposal seems like a good idea, but I ask the minister to address my concern that it might simply be seen as an additional cost for developers to bear and that they might be happy to pay the charge. Will the threat of a fixed-penalty notice be sufficient disincentive to developers to ensure that the notices do not have to be issued too often? Obviously, it would be better not to have to use the mechanism at all.

11:45

Tricia Marwick: I have a slightly different concern on the matter. I seek an assurance from the minister that fixed-penalty notices will not be used when a case could be taken against someone. The minister talks about the speedy resolution of cases, but my experience is that developers have lots of money. I do not want serial fixed-penalty notices to be issued because that situation, in effect, would allow the developer to pay a bit of money and continue to fail to comply with the conditions that have been set.

I seek an assurance from the minister that the Executive does not see fixed-penalty notices as an alternative to legal action. Will a contractor or developer who is in breach—perhaps repeatedly in breach—of their planning conditions not get off with a fixed-penalty notice? Will sanctions be taken against them?

Dave Petrie: What is the destination of revenue from fixed-penalty notices? Will the money go to the planning authority or to the Executive?

The Convener: I welcome amendment 149 on fixed-penalty notices. Much has been said this morning about the need for a sense of fairness and justice in the planning system. For far too many communities, their experience of the system is one in which they have been let down, particularly when an application has been granted and the developer regularly ignores the planning obligations that have been placed upon it.

The ability of local authority planning departments to swiftly issue fixed-penalty notices will make a difference. Communities will see that authorities are taking action speedily against developers and the developers will know that such action is being taken against them. The provision will go a considerable way to rebuilding confidence in the system. For those reasons, I welcome amendment 149.

Johann Lamont: I share the convener's view on the critical role of enforcement in the planning process. I reassure all members that the intention behind fixed-penalty notices is not to make life easier for developers but to recognise the concerns of planning authorities. They have expressed concern that prosecutions can be a lengthy and expensive process and that any fine that is imposed on a developer can be less than the costs that are incurred by the authority.

In certain circumstances, authorities have been unwilling to pursue cases in which prosecution is seen as an excessive reaction to the situation. However, when an authority decides not to prosecute and no alternative course of action is available, the visibility of enforcement is lost. I take the point that a developer may simply write the cost of X number of fixed-penalty notices into their business plan. However, in the bill, we are talking about culture change. The challenge for developers is not to get into the position in which enforcement action needs to be taken against them.

It is not compulsory for a local authority to take the route of issuing a fixed-penalty notice. The provision is aimed at speeding up the process, but the choice of route will remain at the local authority's discretion. If the authority judges prosecution to be more appropriate than issuing a fixed-penalty notice, it can pursue prosecution.

The revenue from fixed-penalty notices will go not to the Executive but to the planning authority. I may not have thought of saying that earlier. I resist the temptation to say anything other than that the revenue will remain with the planning authority.

We are keen to ensure that the level at which a fine is set should reflect any previous contravention of planning controls. Amendment 149 makes provision for the amount of the fixed-penalty notice to be set out in regulations and for it to be varied on a case-by-case basis. That will enable ministers to set out in regulations an incremental scale of fines that will reflect the developer's previous fixed-penalty notices or prosecutions.

As I have said, enforcement seeks to deal with those who are in contravention of their planning conditions and to deter those whose practice it is to build payment of fines into their business plan. Again, we want to focus on the practices of good developers, which are about embracing culture change and doing what they say they will do in

relation to the developments for which they have been granted permission.

Amendment 149 agreed to.

Sections 24 and 25 agreed to.

After section 25

The Convener: Amendment 211, in the name of Donald Gorrie, is in a group on its own.

Donald Gorrie: We all agree that enforcement is important but that it is not done satisfactorily at the moment. In the pamphlet that I wrote about planning, I suggested a new court system to deal with planning and the environment, but I was told that it was not legitimate to put that into the bill, so the minister will be pleased to hear that I did not manage to lodge an amendment to try to achieve that.

Amendment 211 seeks to ensure that the existing law, strengthened by the measures that the minister is putting in place, will be taken seriously. My proposal is that the Lord Advocate produces an annual report that states how many cases relating to enforcement were reported to the procurator fiscal in each area, how many of those cases went to court, how many of them produced a conviction and what penalties were imposed. Such reporting is already done in several areas of the law, either annually or in response to questions.

The production of an annual report would help to encourage the planning authorities to pursue enforcement and it would encourage the courts to take it seriously. At the moment, some courts do not take planning enforcement seriously because it is difficult and some procurators fiscal shy away from it. If we ensure that people take it seriously, that would greatly encourage people to believe in the planning system. The point has just been made that, quite rightly, there is not adequate belief in the enforcement part of the planning system. I hope that my idea will commend itself to the committee and the minister.

I move amendment 211.

Christine Grahame: I wonder what precedent the amendment would open up. Should we ask the Lord Advocate to report annually on the number of breach of the peace cases? Amendment 211 would require the Lord Advocate to report as follows:

"(a) details of how many—

(i) cases are referred to the Procurator Fiscal under this Part,

(ii) how many of those cases proceed to court,

(iii) how many of the cases which proceed to court result in convictions, and

(b) for each conviction, details of the penalty imposed."

Why should one criminal offence be selected for such reporting? We are all assiduous MSPs and, if we want to find out that information, we can ask parliamentary questions or submit a freedom of information request.

I apologise to Donald Gorrie, but I think that his proposal is unworkable and bureaucratic. If we start to ask the Lord Advocate for such information, we could ask him to report on lots of other things.

Johann Lamont: Amendment 211 would require the Lord Advocate to report annually to Parliament and the Scottish ministers the number of cases that planning authorities referred to procurators fiscal under part VI of the Town and Country Planning (Scotland) Act 1997 and the outcome of those cases. Part VI of the 1997 act deals with planning enforcement.

We do not consider that the provision of such information would serve any useful planning purpose. The number of cases that are referred to procurators fiscal varies greatly from year to year and from one authority to another for a wide variety of reasons. The decision to prosecute an individual case is based on the circumstances that apply to it and, when a prosecution results in conviction, the fine that the court sets is also influenced by factors that are specific to the case. Also, we hope that the effective use of fixed-penalty notices will have an impact on prosecutions.

Section 147 of the 1997 act requires planning authorities to maintain a register of enforcement action, which must be available for public inspection. The information to be contained in the register may be prescribed by Scottish ministers and we might wish to consider stating in guidance that the details of any court action that relates to enforcement should be recorded. That would perhaps give the required information.

A report in the format that the amendment proposes would not be of great use in showing planning authorities' success or otherwise in enforcing planning controls. I therefore ask the committee not to support amendment 211.

Donald Gorrie: The latter part of the minister's speech might have been helpful in that, if there are better ways of producing the information, they should certainly be pursued. However, despite the argument that what amendment 211 proposes would be laborious and bureaucratic, I believe that it would be no more bureaucratic for the Lord Advocate to produce the information once a year than it would be for him to do it in response to an MSP's question, which might happen more than once a year. If MSPs knew that the information

was coming once a year, they would not have to bother with questions.

A planning bill should provide for reporting on planning decisions, purely because it is a planning bill. In other areas, evidence that is provided by ministers regarding the number of cases referred and their outcomes is very helpful in showing that the Government machine takes the issue seriously. If the committee were to agree to the amendment, the requirement on the Lord Advocate to report annually would be on the face of the bill, which would signal to the community at large that enforcement is being taken seriously. At the moment, the public quite rightly do not think that that happens. I still think that this is a good idea and I press amendment 211.

The Convener: The question is, that amendment 211 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 211 disagreed to.

Section 26—Tree preservation orders

The Convener: Amendment 150, in the name of Robin Harper, is grouped with amendments 212, 151 to 153, 213 and 214. I welcome Robin Harper to the committee and invite him to move amendment 150 and to speak to all the other amendments in the group.

Robin Harper (Lothians) (Green): Thank you and good morning. I declare an interest: I am a member of the Woodland Trust, if I am up to date with my subscriptions.

The effect of the amendments in the group would be to place a very minor duty on the Executive to keep a register of Scotland's 100 identified heritage trees—although I hope that we will find some more—and to make such regulations as might provide for their continued preservation, maintenance and protection.

Our key message is that if we do not do something now, we will continue to lose some of our most important heritage trees for future generations. The Scottish Parliament has a real opportunity to lead the United Kingdom in following examples from Europe and safeguarding an exceptional element of our natural heritage.

The tree protection order system is mainly reactive and cannot address the problem. A register would pre-empt the threats to our most important trees. Heritage trees provide a living link to Scotland's history and culture and have tremendous potential value for tourism and education. During the past two years, we have lost the Strathleven or Dumbarton oak, which was around at the time of James IV, the Newbattle abbey sycamore and the wishing tree of Argyll through vandalism and poor maintenance. They could have been protected if we had had the regulations that I am proposing.

Sweden is investing £35 million in an action plan for trees with high conservation value and Poland, Germany, France, the Czech Republic and Spain have national lists of protected trees.

My amendments are supported by the Arboricultural Association, the Woodland Trust, the ancient tree forum, and the Tree Council. They are also supported in principle by the Forestry Commission Scotland and Historic Scotland.

There is a proposal that the historic parks and gardens inventory be given statutory protection. Why not extend that to a register of heritage trees?

There are many reasons for supporting the proposal. First, it would provide a mechanism for identifying and giving statutory recognition and protection to trees of national importance. Secondly, a national register would promote a consistent, proactive management approach. Thirdly, a statutory register could provide a means of better access to advice and grants for owners. Fourthly, it would bring Scotland into line with many European countries that have tree registers and strong protection for their nationally important trees. Fifthly, a register could be used to promote exceptional trees to attract national and international visitors. Such a tree is the Fortingall yew, which is already well visited. Sixthly, a register would require owners to give prior notification of intended work. That is important because, by the time a TPO is served, it is often too late and the work that has been done on the tree might have damaged it. The TPO system was not designed to manage proactively and promote heritage trees; it is used simply when a tree is at risk. We do not think that that is enough. Many of the trees that are lost to vandalism and inappropriate management would not be protected through the TPO system. Finally, the TPO system is compromised by a lack of resources. A register would allow the prioritisation of Scotland's most important trees.

We have been careful not to place too much detail in the amendments, for the benefit of the Executive. If the proposals are accepted, it will be open to the Executive to tak tent of them and to pursue the matter in any way that it thinks would be productive. However, we think that there should be a duty on the Executive to keep a register of the 100 trees that are of huge historic value to Scotland.

I move amendment 150.

12:00

John Home Robertson: Perhaps I should make the obvious distinction between what Robin Harper is talking about now and the problem with trees and high hedges in residential areas that we were talking about earlier. I like the initiative that has been suggested and my heart tells me that it is the right thing to do. I make that point not only as a former minister with responsibility for forestry but as someone who has taken an interest in trees, and particularly in heritage trees, for a long time. There are quite a few heritage trees in my constituency, including the great yew at Ormiston.

My heart tells me that this is the right thing to do but my head says, "Be careful." The Scottish Parliament is a powerful body but I do not think that it is in our gift to amend the laws of nature. I would love to be able to abolish mortality—for some of us, if not for all of us—but, whether we like it or not, we must accept that trees, like the rest of us, are living beings that will drop dead at some point. We need to face that fact. So much managing to try to protect trees can be done, but there comes a point at which the more relevant activity is to try to propagate from the tree to ensure that the species continues rather than trying to shore up something that is dying or dead. We need to be realistic.

I hope that the minister will be able to help us with the issue. There are some important heritage trees in various parts of Scotland that are valuable to their local communities and are assets for the nation in their role as tourist attractions. Robin Harper referred to the Fortingall yew, which is supposed to be the oldest living organism in Europe, if not the world—or something like that. It would be wonderful if it could be preserved forevermore, but that might not be physically possible.

Robin Harper: May I—

The Convener: Mr Harper, I know that it is some time since you last visited a committee, but you will get a chance to respond when you wind up the debate on the group of amendments.

Dave Petrie: With my party's new logo, how could I resist a debate on trees?

There is a great deal of merit in Robin Harper's proposals, but I have one fear. Having heard what he said about tree preservation orders, I am interested to know whether the trees that he has in mind are currently covered by TPOs. If they are, we could be in danger of duplicating the provisions and there might be more merit in amending the current TPO legislation. On security, I will be interested to hear how such trees would be protected any more than other trees that might be subject to vandalism.

Euan Robson: I have considerable sympathy with the spirit of the amendments. It is important that we protect these hundred or couple of hundred trees. The amendments seek to set up a register of trees. That is fine and I have no problem with that. However, a register per se will not protect trees. Robin Harper suggested that the register would protect trees against vandalism. However, the idea that a vandal will consult the register and think, "Oh, I had better not attack that particular tree," does not hold much water.

The register might seek to protect against inappropriate maintenance of such trees, but there is something missing from the amendments, in that they do not will the means. In other words, if we set up a register—which, incidentally, could be drawn up quite adequately by another body, perhaps with Scottish Executive funding—what will happen then? Yes, the register would provide a good reference point and I do not dispute that it could help to develop tourism. However, the amendments would not advance the protection of trees, because we would come out the far end of the process saying, "Oh well, we are back to the tree preservation order." What has not been grasped is the need for a further stage that wills the means to ensure the protection of the trees.

Frankly, I am in two minds about the amendments. Although I very much welcome the register as a good idea with which I have no particular difficulty, it would not deliver the necessary protection, which is the fundamental point.

Tricia Marwick: I should perhaps declare an interest. Members may recall that organisations that wanted the bill to be amended to provide for a register of trees had an exhibition in the garden lobby a few months ago. Members may wish to know that I won the tree that was on offer and have already received that gift.

Christine Grahame: Is it still alive?

Tricia Marwick: I can assure the organisation that gave it to me that the tree is indeed still alive. It is in my garden. It is referred to by the family as "the ugly tree". Nonetheless, I love it dearly and it will be protected by me.

Having declared that interest, let me say that I genuinely support the amendments in the name of Robin Harper. Scotland has a number of trees that are of great importance, but we do not have a register of where they are. Local people may know about such trees, but nobody else does. A register would highlight the trees that we have and would be an attractive proposition for tourists who want to look at them.

I feel strongly that we need to deal with the fact that such trees have no greater protection than any other tree. Trees such as the Fortingall yew and the many other important trees that we have in Scotland need to be offered a greater prioritisation of protection. The register would do that because it would focus minds on how important such trees are to our countryside and to our urban communities. They are part of our history and culture; they are unique; and they are living organisms. We must do all that we can to protect them.

If members are saying that the proposals are not the right way to protect trees, I say to them that the current arrangements are surely not right either. People seem to be defending arrangements under which we could lose the Strathleven oak. We have lost the Newbattle abbey sycamore and the wishing tree of Argyll. I am not saying that a register would solve everything, but it would focus attention on and prioritise our most important trees. Therefore, I urge members to support the amendments.

Patrick Harvie: I welcome the spirit of Robin Harper's amendments. He talked about the need to protect proactively specific heritage trees. We make distinctions in our built heritage in treating different buildings in different ways, according to their cultural, historical or aesthetic value, and it is reasonable to make similar distinctions with trees. As Robin Harper said, we are talking not about imposing a huge, burdensome task, but about a relatively small and manageable number of trees.

A register is clearly the correct starting point. Euan Robson may be right—there may be room for including additional duties in the bill so that requirements are placed on local authorities to be proactive in caring for and protecting trees, but those duties can be added at stage 3. I hope that the minister is open to the proposals and says something positive about them or about what the Executive will do to address the matter.

Christine Grahame: Tree lovers are coming out of the closet. I get dismayed at the destruction of trees. Tree preservation orders are often not worth the paper they are written on. Developers simply chop down trees and then say, "Do what you like—they're down," or individuals chop them down deliberately or because they do not know any better—developers usually do know better—and nothing can be done about what has happened. I have planted many trees and am content with the proposals.

I am interested in amendment 153, which mentions trees or woodlands that "contribute to biodiversity." Last week, we discussed high hedges in urban areas and people who buy flats, at the back of which are old drying greens with trees, birds, squirrels and so on. As a result of having seen garden makeover programmes, the first thing that some of those people want to do is to chop down the trees, put up wicker fencing, lay patios, bring in heaters and generally destroy things. Contributing to biodiversity is not only an issue in rural areas; it is also an issue in urban areas, where people should not chop down trees that are good for the environment.

I am pleased that the proposals have been made and wish that I had thought of them. The amendments are sweet and interesting and everybody should support them.

Johann Lamont: Sweet and interesting as I am, I always aim to be helpful, as John Home Robertson knows. I say to Patrick Harvie that I strive to be positive in everything that I do, and I hope that Robin Harper will realise that there are positive elements in what I have to say. All of us are signed up to the general position on trees that has been outlined.

Amendment 150 seeks to extend to Scottish ministers certain duties of planning authorities in relation to trees, including the existing statutory requirement on planning authorities to ensure that, whenever it is appropriate, in granting planning permission for any development, adequate provision is made by the imposition of conditions for the preservation or planting of trees. It is reasonable that the same requirement should be placed on Scottish ministers where they are making the final decision on a planning application.

Amendment 150 also seeks to place duties on ministers to make, revoke and review TPOs. Scottish ministers already have the power to make and revoke a tree preservation order where doing so is expedient, although they would become involved only in exceptional circumstances where there are strong and compelling grounds to justify their action. It would not be appropriate for ministers to be responsible for reviewing TPOs, as that is part of the planning authority's wider role in relation to trees and landscaping. Therefore, I do not support that aspect of the amendment and recommend that it be withdrawn so that we can give further consideration at stage 3 to the first duty—to ensure, whenever it is appropriate, that in granting planning permission for any development, adequate provision is made by the imposition of conditions for the preservation or planting of trees.

12:15

Where it is in the interests of amenity or where the trees are of cultural or historical significance, amendment 151 would require planning authorities always to make a tree preservation order. Such a reduction in planning authorities' discretion would undermine their ability to decide on the circumstances in which making an order would be most effective. I do not believe that amendment 151 is helpful, so I ask the committee to reject it.

Amendments 153 and 152 seek to alter and extend the circumstances that could trigger the making of a tree preservation order. The bill itself provides for additional circumstances based on "cultural or historical significance." That provision arose from consultation with a wide range of stakeholders in 2004 and 2005 and allows for old or rare trees, or trees that are connected with particular historical events, to have special protection.

On the detail of amendment 153, I believe that the provisions in the first new paragraph that the amendment proposes to insert in the principal act, on

"the appearance of the locality",

are already covered by the existing powers in the 1997 act in respect of the "interests of amenity". That is a long-standing but broad term, and we intend to provide further guidance on its interpretation in the future.

Some of what amendment 153 proposes repeats the new provision in the bill on "cultural or historical significance", but the rest of it is new. However, I believe that the further criterion on "rarity value" is already covered by the provision on "cultural or historical significance", and that "biodiversity" is better protected by other policy mechanisms or designations such as sites of special scientific interest. Therefore, I do not consider that the additional provisions are required and I recommend that the committee reject amendments 153 and 152.

Amendment 212 seeks to make it a statutory requirement for local authorities and Scottish ministers

"in exercising any function in relation to land"

to

"have regard to the desirability of preserving"

protected trees or trees that are

"contained within a register of trees of special interest and … the setting of any such trees."

It is a very broad amendment, which seeks to make a legal requirement in respect of the sort of issue that is normally reserved for planning policy.

For example, national planning policy guideline 14, on natural heritage, states:

"Planning authorities should seek to protect trees, groups of trees and areas of woodland where they have natural heritage value or contribute to the character or amenity of a particular locality."

Therefore, although I fully support the principle behind amendment 212, the issue is already an important national policy objective. Elevating consideration of the matter to a statutory requirement would prioritise it over the whole range of other planning issues that planning authorities and ministers need to balance in reaching their decisions. I do not consider that amendment 212 is appropriate and I recommend that it be rejected.

Amendment 213 seeks to give Scottish ministers powers to compile a register of trees of special interest and the ability to approve, with or without modifications, a register of such trees that has been compiled by another person. I consider that the new provisions on TPOs in the bill, including the one on serving TPOs for historical or cultural reasons, offer new opportunities to protect special trees and will strengthen the powers of protection. In the light of that, I do not consider the case for a statutory register of trees of special interest to be justified and I recommend that it should not form part of the Planning etc (Scotland) Bill. I ask the committee not to support amendment 213.

Amendment 214 seeks to give all trees in the register of special trees of interest the same status as trees in a conservation area. That would require prior consent from the planning authority to carry out work on the trees in the register regardless of whether the tree was covered by a TPO or not. Therefore, the amendment is likely to increase significantly the workload of planning authorities. As I do not consider that the case for a statutory register of trees of special interest is justified, and as amendment 214 is likely to increase significantly the workload of planning authorities, I recommend that amendment 214 also be rejected.

Robin Harper: I will go through committee members' comments first. We were very aware of the fact that trees die. I do not think that there is anything in our proposals to suggest that we should prolong the life of trees beyond their sell-by date. They do die, and dead trees are sometimes quite dangerous. The decision would be subject to any regulations that are made, but obviously a tree in a dangerous condition must come down.

On Dave Petrie's point about the protection of trees, it would be open to local authorities and the Executive to differentiate. There will be different degrees of risk. Some trees are relatively safe because they are in full view of the community and are unlikely to suffer damage, but other trees are

in less secure locations and it would be sensible to put fencing around them, for example. It would be up to local authorities or the Executive to ensure that there is a reasonably regular inspection of the trees to ensure that they are not suffering from vandalism. My amendments do not contain details of what must be done to protect trees because the levels of risk are so different.

Euan Robson is worried that the register would not protect trees. It would not protect them automatically, but it would allow for the development, through regulations, of measures that will protect trees in the future. The important thing is that the register would give the trees status. If we put the trees on a national register, as so many European countries have done, they would be given status automatically. It would place a moral duty on local authorities and would encourage tourist boards and others to say, "We have this valuable tree in our community. It's on the register. We're going to use it." Education authorities will say that focusing on local trees is a wonderful way of teaching history, biology and so on.

I thank Tricia Marwick and Patrick Harvie for what they said in support of the amendments. The Executive has given detailed responses and I have been invited to withdraw amendment 150 to give the Executive a chance to come back with its thoughts, but I do not see any problem with the committee voting on the amendments.

I am going to make a judgment. I will seek to withdraw amendment 150 on the Executive's advice and on the understanding that it will come back with proposals on the matter, but I will move the rest of my amendments and leave it to the committee to decide.

Amendment 150, by agreement, withdrawn.

Amendment 212 moved—[Robin Harper].

The Convener: The question is, that amendment 212 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 212 disagreed to.

Amendment 151 moved—[Robin Harper].

The Convener: The question is, that amendment 151 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 151 disagreed to.

The Convener: Mr Harper, do you wish to move amendment 152?

Robin Harper: I am getting the picture. I will save the committee's time and not move my other amendments.

Amendments 152, 153, 213 and 214 not moved.

Section 26 agreed to.

After section 26

Amendment 156 not moved.

Section 27 agreed to.

Section 28—Assessment of planning authority's performance or decision making

The Convener: Amendment 138, in the name of Christine Grahame, is in a group on its own.

Christine Grahame: Amendment 138 is a very dull little amendment after the tenderness of the tree amendments that we have just considered. We are back to openness and accountability.

Section 28 is important because it provides that the Scottish ministers may—they are not required to do so—appoint a person to assess a planning authority's performance and decision making. If this proposal is already buried elsewhere in the bill, I did not see it but, frankly, such assessment reports and the planning authority's response to them should be in the public domain. Amendment 138 also picks up my old chestnut—I am back to

nuts and chestnuts—about the importance of publishing such things electronically so that members of the public can read them on the internet.

Picking up on the spirit of Donald Gorrie's amendments, which I was not able to vote for, I believe that we need to be open and allow people to see what is happening. People should be able to see how their local authority has performed if such a report has been required by ministers. Unless I have missed a similar existing provision—in which case, I am sure that the minister will tell me—I believe that we need to require that such reports are published and made accessible to the public. I await the minister's response.

I move amendment 138.

Johann Lamont: Amendment 138 would require that any document that is provided for in the assessment provisions of the bill must be published. I fully accept the need for transparency throughout the operation of the planning system. We certainly expect that assessment reports, the responses to them, directions and associated documents will be placed in the public domain. As official documents, such reports and responses will certainly be subject to the requirements of the Freedom of Information (Scotland) Act 2002 and will be published according to the Executive's publication scheme under that act.

The assessment provisions are broadly based on the provisions for audit reporting by the Accounts Commission under local government legislation and there is no statutory requirement for the publication of reports in that regime.

As the documents will be placed in the public domain, we feel that amendment 138 is an unnecessary addition. We also have some concerns about its wording. In the interests of moving on more quickly, I can look at the issue again but I ask Christine Grahame to withdraw amendment 138 at this stage. We will look at whether there is a substantial issue and, if there is anything that we can do to reinforce the provision, we can do so at stage 3.

Christine Grahame: I am content with the minister's response. I think that I might have a partial victory—I was frightened to say so in case it is taken away from me, but I have said it now—so I will seek leave to withdraw the amendment.

Amendment 138, by agreement, withdrawn.

Section 28 agreed to.

Section 29—Fees and charges

The Convener: Amendment 127, in the name of Dave Petrie, has already been debated. Does Mr Petrie wish to move the amendment?

Dave Petrie: I will not move the amendment.

Amendment 127 not moved.

Section 29 agreed to.

Dave Petrie: Convener, can I just make a point?

12:30

The Convener: I am afraid that you are not in a position to do so, Mr Petrie. I gave you an opportunity to move your amendment. All members are under an obligation to watch what is happening in the committee—I am afraid that you chose not to do so. We have moved on and agreed the section, so we cannot go back.

Section 30—Grants for advice and assistance

The Convener: Amendment 215, in the name of Donald Gorrie, is grouped with amendments 252 and 253.

Donald Gorrie: Section 30 is welcome in that it allows the Scottish ministers to make grants to help people to give advice on planning matters. Euan Robson and I have lodged amendments to ensure that such advice is independent and impartial. There might be a point in having other people give advice that is not independent and impartial, but I think that advice funded by ministers should be independent and impartial. My amendment 215 would insert into proposed new section 253A of the 1997 act the words "independent and impartial".

Amendment 253, which is more substantial, aims to provide for the Scottish ministers to establish a fund that would be run by a national committee. Local committees would disburse grants to people who give advice on planning issues. If we are to have the really successful planning system that the bill aims to provide, with pre-application consultation and consultation about plans, the funding of advice will be important. The best intentions might be subverted if there is not adequate funding.

The local committees that I propose could give grants to groups that would advise people whether their contention was of sufficient importance. Whether they had a good case could then be debated and judged. Where there are competing views, the local grant-giving body could support both sides if it thought that there was genuine, strong local support for them.

Regardless of whether the minister or committee members like amendment 253, the funding of advice is important. The bill already acknowledges that there should be such funding and my amendment seeks to systematise it. I hope that members and the minister will support the idea.

I move amendment 215.

Euan Robson: I lodged amendment 252 for precisely the reasons that Donald Gorrie articulated. If a person or organisation is given grant aid, it should be clear that they are offering independent and impartial advice. If there is not at least a requirement for ministers to "have due regard" to that, there is a risk—albeit a small one—that money could go to an organisation that has a campaigning side to it and takes a particular view of how planning might develop. It is important that the advice that is given to groups is the sort of advice that one would get from citizens advice bureaux or Planning Aid for Scotland, whose advice is free, independent and impartial.

In lodging amendment 252, I am attempting to do no more than to ensure that, where groups are getting advice, the nature of the advice that they are given is free, independent and impartial. This provision would strengthen the process considerably; it would ensure that the argument cannot be made that the advice that a group has been given comes from any one quarter, has a particular slant or comes with a hidden agenda. I have lodged amendment 252 for that reason. I will be interested to hear what the minister has to say.

Christine Grahame: I have a surprise for Donald Gorrie; I will support his amendment 215. It is absolutely fine for the words "independent and impartial" to be inserted into the bill. That will make things crystal clear. I will not support Euan Robson's amendment 252. In legal usage, the phrase "have due regard" is seen as weasel words—the meaning is unclear.

I turn to Donald Gorrie's amendment 253, on assistance to community bodies. I congratulate Donald on the work that he has put into drafting the amendment, but the system that he proposes seems laborious. As in his previous amendments, Donald has used the phrase "a substantial connection". I am not sure how that would work in practice.

I seek clarification from the minister on the interaction between the provisions of section 30 and Planning Aid for Scotland, to which Euan Robson referred. Surely the purpose of Planning Aid for Scotland is to give independent advice to communities and individuals. Unless the provisions of section 30 relate to Planning Aid for Scotland, it would seem that another system is being set up. No doubt the minister will provide the answer.

Patrick Harvie: Donald Gorrie's amendment 253 goes some way to rectifying the imbalance in the resources that are being made available. Unlike large-scale developers, community groups cannot hire or buy in the advice that they need. I would like to see the situation where community groups have advice that is on their side—the sort of advice that some regard as campaigning. Well resourced developers can afford to buy in advice and assistance to fight their corner. Communities should be able to do the same thing.

Independence and impartiality are necessary because public funding is involved and not because those qualities are necessary to serve the interests of communities. It is unfortunate that advice can be provided only by means of public funding, with the requirement for such advice to be impartial. I will support Donald Gorrie's amendment 215. If it falls, I will support Euan Robson's amendment 252.

Cathie Craigie: I will address amendment 215, with which I have some sympathy. Section 30 sets out that

"The Scottish Ministers may make grants for the purpose of assisting any person to provide advice and assistance".

We must ensure that public money is spent in such a way that people will get "independent and impartial" advice. Those words may not be the exact phrase that is required in the bill, but the proposal is worthy of consideration. If the minister is not minded to accept amendment 215, I hope that she will give the proposal further consideration. We must ensure that advice is "independent and impartial". If that is stated elsewhere in the bill, I will be happy to hear it.

Johann Lamont: Amendments 215 and 252 seek to amend ministers' grant-making powers, which are contained in proposed new section 253A of the 1997 act. I note the welcome that has been given to the fact that those grant-making powers have been included in the bill.

Donald Gorrie's amendment 215 seeks to constrain the Scottish ministers to provide grant funding to only those persons who provide independent and impartial advice on, or assistance with, planning legislation. Indeed, that is perhaps the point that Patrick Harvie highlighted. Euan Robson's amendment 252 is less prescriptive in that it seeks to require that ministers should

"have due regard to the independence and impartiality of the person providing advice and assistance."

The Executive is currently funding a number of work streams that are designed to improve participation and performance in the planning process. Our core funding of Planning Aid for Scotland is helping it to provide the independent and impartial advice and assistance that Donald Gorrie and Euan Robson are looking for.

Through our planning development programme, we are supporting the modernisation and reform of the planning system by identifying local authority skills and training needs with a view to improving performance. The programme also allows us to support activities such as e-planning and the

proposed mediation pilot. The provision in the bill is therefore intended to provide the flexibility that we require to fund a range of activities related to the support and improvement of the planning service.

I am concerned that if these amendments are agreed to we might not be able to fund activities such as training or advocacy through the planning system. Although Planning Aid for Scotland provides independent and impartial advice, ministers might well wish to fund organisations that would not necessarily be seen as independent and impartial. For example, ministers recently funded Friends of the Earth Scotland's citizens environment development and advocacy project through the sustainable action fund. CEDA provided advice and advocacy support to community groups and individuals to get involved in the planning process, including support and advice on specific applications and public local inquiries. Although there are no plans at the moment to fund a CEDA-style project, agreeing to either amendment 215 or amendment 252 could mean that granting funds to such projects would be ultra vires. I therefore recommend that the committee reject both amendments, although I should make it clear that we are aware of and are addressing various matters related to the broader issue of grant-making powers.

Amendment 253, also in the name of Donald Gorrie, seeks to require the Scottish ministers "to establish a fund" so that grants may be made

"to community bodies in order to ensure that such bodies have access to independent and impartial advice and assistance in relation to"

their involvement in development plans, development management and appeals. It also seeks to require the establishment not only of a national committee to oversee the fund, but of local committees linked to each planning authority—although it does not say who would set up these committees or who would form their membership.

I am very concerned that, if amendment 253 were agreed to, it could lead to an overly bureaucratic, cumbersome and costly system for granting assistance to communities. The amendment also contains the same limiting definition of communities that was highlighted in discussions of Donald Gorrie's earlier amendments.

Support is already made available to communities to help them engage in the planning process through mechanisms such as Planning Aid for Scotland. As the bill provides ministers with the necessary powers to provide further support for communities' involvement in the planning system, I recommend that the committee reject amendment 253.

Donald Gorrie: Christine Grahame and the minister touched on how a community body has been defined in several of my amendments. I should point out that that definition is taken straight out of section 23, so I am afraid that it is a case of what is sauce for the goose. Moreover, if the minister had advised the committee to accept and if the committee had voted for my very early amendment on local planning forums—it was about 50 amendments ago, so you might well have forgotten it—the definition of a community body would have been sorted out by now.

However, the serious question is whether advice should be independent and impartial. It is good that the Executive has supported a group that is interested in planning issues but is not independent and impartial. Perhaps there should be two forms of support, one for anyone interested in planning and one that would be independent and impartial.

That said, some groups that get involved in planning but are, for example, keen on promoting wildlife or whatever it might be are already remarkably well funded. They probably do not need the funding, whereas community councils and people like that who want to fight a local planning application or wish to put constructive ideas into a development plan need advice, which should be impartial and will be helpful to them without lining them up with one of the big beasts in the planning jungle, who usually support beasts of one sort or another.

We should try out the "independent and impartial" proposal. When any fund dishes out money, a structure must be in place to enable it to do so in a locally responsive way. Amendment 253, on assistance to community bodies, allows for that. If anyone has a better system, let us have it. There must be proper funding of community bodies, which the minister has started to recognise, as there is a provision in the bill about it.

My amendments 215 and 253 are valid and so is Euan Robson's amendment 252. I press amendment 215.

12:45

The Convener: The question is, that amendment 215 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
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)

ABSTENTIONS

Harvie, Patrick (Glasgow) (Green)

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

Amendment 215 disagreed to.

Amendment 252 moved—[Euan Robson].

The Convener: The question is, that amendment 252 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

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

Harvie, Patrick (Glasgow) (Green)

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

Amendment 252 disagreed to.

Amendment 253 moved—[Donald Gorrie].

The Convener: The question is, that amendment 253 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)
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)

ABSTENTIONS

Harvie, Patrick (Glasgow) (Green)

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

Amendment 253 disagreed to.

Section 30 agreed to.

After section 30

The Convener: Amendment 132, in the name of John Home Robertson, is in a group on its own.

John Home Robertson: Amendment 132 is intended to find an honest way to address the perceived conflict between the duty of members of planning authorities to fulfil their quasi-judicial role in making planning decisions and their equally important responsibilities as elected representatives of their local communities. The current situation is fraught with risks of misunderstanding, misinterpretation and mischief.

We have probably all seen situations in our constituencies when there is a controversial planning application for a site where the elected local councillor is a member of the planning committee. He or she is in effect gagged, as any expression of an opinion, let alone representations for or against the application, could be seen as prejudgment of the issue, which could be grounds for a challenge to the local planning authority's eventual decision. That is all very well, but a citizen who is either for or against the proposed development often finds it impossible to understand why his local councillor, who is usually bursting with enthusiasm to comment on local issues, suddenly becomes as dumb and inscrutable as a Trappist monk.

I remember a meeting in my constituency when some fairly outrageous accusations of collusion and self-interest were made about a local councillor who has an impeccable record of honesty and propriety but was prevented from saying anything about the application. It was alleged that his silence on the application meant that he was in cahoots with the developer. He was in fact opposed to the proposal, but he was not allowed to say so. However untrue such allegations might be, mud can stick. Life is difficult enough for local authority councillors nowadays; Parliament has a duty to consider the situation and try to find a way through it.

I am pleased to see that David McLetchie has joined us. He might have an interest in this amendment because he referred to the issue in our stage 1 debate on the bill. I hope that he will not mind if I quote his wise words. I rarely side with David McLetchie, but I will this time. He said:

> "At a local level, the restrictions placed on councillors that prevent them from commenting on planning applications that affect their communities are unduly onerous … the code of conduct for councillors is totally at variance with political realities. If local councillors share a community's strong opposition to a development proposal, they should be free to represent and articulate their constituents' views. Frankly, it is ridiculous that they are barred from doing so.
>
> Planning is at the heart of politics. We must not forget that fundamental fact when we consider the bill."—[*Official Report*, 17 May 2006; c 25672.]

I endorse those views. That has been my experience in my constituency. There is a problem and we must find a way of addressing it.

I submit that we need to find a way to allow elected councillors to express their views about planning proposals in their wards and elsewhere in their area without debarring themselves from their rights and duties as members of the planning authority. Amendment 132 is intended to provide for a review of the code of conduct to address that problem. I hope that that is helpful.

I move amendment 132.

Dave Petrie: I whole-heartedly support the amendment. It makes a lot of sense and I agree with what John Home Robertson and David McLetchie have said. It is ridiculous and irrational for councillors to be restricted in such a way that they cannot act in the best interests of their constituents. I fully support an amendment along those lines.

Tricia Marwick: I concur with that. There is a problem and local councillors will tell you of their frustration at feeling debarred from genuinely representing the views of their community if they are also sitting on the planning committee. I do not know what the solution is. John Home Robertson has suggested a review of the code of conduct for councillors, so perhaps we can get wiser people to put their minds to it than those who are sitting around this table today, not least the councillors who are most affected.

We need to do something and I urge the minister to reflect on the cross-party support for such a review; perhaps she could give us some comfort that the Executive will address the issue at some stage in the near future.

Patrick Harvie: The amendment is welcome. During the course of the bill, we have had several debates on the democratic role of elected members at local and national levels, about which there are different views. Some members have made the case that a minister deciding on an application that has been called in is preferable to a planning official making that decision because the minister represents a democratically elected authority. However, the minister will not necessarily represent the area in question; they might have been elected from a completely different part of the country from that in which their decision will affect people's lives. It might be possible for one contentious planning issue to dominate an election and result in a change of local councillor, only for the community to find that it has elected a representative who is unable to help it in any way. Calling for a proper review in light of the operation of the bill is the right way forward and I am convinced that it will lead to recognition that there is a need to revise the situation substantially.

Scott Barrie: John Home Robertson was right to raise the issue, which was also raised during the stage 1 debate. The issue for the committee is how we resolve this difficult problem. Tricia Marwick made some salient points in what she said about this not being the way to address the matter, although it is clear that we have to find some way of resolving this intractable difficulty. The situation that local authority members find themselves in is absolutely ridiculous and I do not think that communities understand the legal niceties that prevent councillors from making public statements. That is the problem that we must overcome. I am not particularly bothered how we do that; however, it is important that we find some way of doing it. We cannot go on with the system as it currently is. Our communities do not understand why elected members make no statements, and elected members are constantly being told that, because of their quasi-judicial role, they had better err on the side of caution and not say anything. That serves nobody's purpose.

Cathie Craigie: I have sympathy with amendment 132, for the reasons that other members have outlined, and I want to hear the Executive's view on the matter. I doubt whether we need provision in the bill to allow what John Home Robertson requests to happen, although there must be a review. The concerns that have been raised this morning must be addressed and a system must be put in place with which local people feel comfortable. Just now, on many occasions, people feel that the situation is a cop-out by the councillors, as John Home Robertson described earlier.

John Home Robertson: Or worse.

Johann Lamont: Amendment 132 would require the Scottish ministers, within one year of commencing the proposed new section and following consultation with those they consider appropriate, to undertake a review of section 7 of the "Code of Conduct for Councillors" that has been issued under section 1 of the Ethical Standards in Public Life etc (Scotland) Act 2000, which relates to the ability of councillors effectively to represent the electorate on planning matters. If necessary, in the light of that review, ministers would revise and reissue the councillors code. The Executive and I would not downplay the importance of the issue. That is reflected in the discussion that has taken place already.

The Executive recognises the difficulty that some councils and councillors have had in interpreting the terms of the planning section of the councillors code; however, I am not yet convinced that we need to deal with the matter in the bill. I will suggest how it might be dealt with

alternatively. The amendment would not necessarily address the perceived problem.

At the core of the planning system is the democratic accountability of decision making. The importance of that responsibility cannot be overemphasised. In coming to a decision, the councillor must not have or be seen to have prejudged any application before the meeting to determine the application. That will help to ensure a proper and fair hearing for planning applications. It is essential that councillors who make planning decisions understand the ethical issues underlying the handling of planning matters. Equally, we recognise—as I have acknowledged throughout the debates on these issues—the critical role of councillors in representing their communities.

That highlights the dilemma that John Home Robertson has identified of whether it is possible for councillors to take part in the planning process if they have a strong view and wish to represent and advocate on behalf of their community, or whether they should feel unable to make public statements—even if they want to—on a decision that will be made by the planning authority. That dilemma must be addressed.

The Standards Commission for Scotland consulted councils on the issue in 2003 and published statutory guidance in 2004 that makes clear the rightful role that councillors have in hearing concerns and makes suggestions about courses of action that would not prejudice their involvement in the decision-making process. The Standards Commission makes it clear that the guidance and the code should be read together to provide a complete set of rules and responsibilities for councillors.

The Executive will keep that position under review, and it is possible that a wider review of the ethical standards regime—to include the codes of conduct—could be undertaken in the next year or so, once the regime has bedded in more fully. I do not consider that amendment 132 is appropriate. Nevertheless, we recognise that there is an issue and I am more than happy to reflect further on it. I do not think that the issue needs to be included in the bill; however, we need someone to clarify for councillors and local communities what a councillor's role is in informing the planning authority of the concerns of their local community. I urge John Home Robertson to withdraw amendment 132.

13:00

John Home Robertson: We have made some useful progress in the debate, and I am grateful to colleagues from all parties for expressing unanimous concern about the dilemma that local authorities face under the present circumstances. I am grateful for the minister's reply. She acknowledges that the dilemma must be addressed and has given more than an indication that the Executive is likely to return to the issue. Having had that clear statement from the minister, it is fair to expect that we will be able to make some progress on the issue in the foreseeable future.

The minister is right—as are other colleagues—in saying that it would be untidy and probably inappropriate to put provision for a review into primary legislation. Amendment 132 was lodged as a vehicle to get a debate on the issue, to give colleagues an opportunity to express their opinions on the matter and to allow the minister to indicate that something will be done about it. It has been unanimously agreed that it is a genuine problem that needs to be addressed, and I think that councillors of all parties and none, all around Scotland, would welcome clarification on the point.

I am grateful to the minister for her undertaking, on behalf of the Executive, to look at the issue. Under the circumstances, I ask for leave to withdraw the amendment.

Amendment 132, by agreement, withdrawn.

The Convener: Amendment 216, in the name of Donald Gorrie, is in a group on its own.

Donald Gorrie: I congratulate John Home Robertson on amendment 132. My proposed specialist advisory groups could include a group to examine the code of conduct—an important issue—because such work is exactly what I have in mind for them. However, I am not trying to sneak a vote out of him with that—I know him better than that.

People who know a lot about planning to whom I spoke when I was composing a pamphlet on my proposed specialist advisory groups thought that we should have a better system of advising everyone—from the minister down—on the various aspects of planning. It is a very complex area, so my suggestion is that we create specialist advisory groups. Proposed new subsection (6) in amendment 216 lists examples of subjects for which specialist advisory groups might be created. Let us look at those first—I will return to the question of who might be on the groups.

The suggestion has been made that there should be a statutory purpose for planning: we could get some wise people together to devise that. The question of the hierarchy of different developments and categories requires more detailed work, and there could be a group on that. Also, planning policies and guidance can often be extremely opaque, so it would be helpful if a group of experts could make those clearer. Another group might deal with the use of information technology in the planning process. Governments,

like large commercial organisations, have a lamentable record on the introduction of IT and often come totally unstuck. We could learn from past mistakes and make better use of IT in the planning process.

Amendment 216 lists urban design and renewable energy—which, as members know, generates political heat as well as power. It would be helpful to have good neutral advice on that issue. The amendment also mentions green belts and affordable housing, which I and other people pontificate about, as well as the built and natural heritage.

Those are the sorts of groups that I envisage everyone could do with good advice from. Each specialist group would consist of some experts, some representatives of planning authorities—councillors and officials—who deal with the specific area of work, and people who are experienced in giving advice to communities on planning issues. The ministers and Parliament could suggest other subjects for groups to examine and, once a year, the ministers would report on how the groups were getting on. If the groups were not doing anything, they would say why they were not doing anything.

No doubt, I will be told that my idea would be excessively bureaucratic. Nevertheless, I believe that there should be skilled advisory groups advising people such as ministers, leading national and local officials, local groups and MSPs who have to make decisions about wind farms or whatever. I hope that the idea, if not the amendment, will commend itself to the committee and the minister.

I move amendment 216.

Johann Lamont: Amendment 216 would introduce a requirement on Scottish ministers to establish specialist advisory groups to investigate and report on a range of specified issues related to the operation of the planning system, including urban design, wind power and the use of information technology. The amendment specifies that Scottish ministers would prepare and issue an annual report to the Scottish Parliament on each group's activities. Where an advisory group was not formed for one of the specified topics or if an advisory group in a specified area did not undertake any work, Scottish ministers would have to issue an annual report explaining why.

The bill will introduce enhanced public consultation arrangements in the planning system in order to engage with and be informed by stakeholders at all levels. A number of similar stakeholder advisory groups already exist to support specific work in many of the areas that are specified in the amendment, such as e-planning. Those advisory groups are established—and, subsequently, stand down—where there is a specific need to support the development of guidance documents or initiatives.

Donald Gorrie suggests that I might think his idea overbureaucratic: people can make that judgment for themselves. Suffice it to say that we now have people in Government who are confident enough to work closely with the people who understand best how things should work, what the challenges in our communities are and what the problems are for specific groups. Across a range of areas, it is clear that the Executive understands that policy is not a matter to be decided in St Andrews House or Victoria Quay and brought to bear on local communities; it is at the heart of the way in which we conduct our business. Therefore, the formal establishment, through an amendment, of specialist advisory groups is entirely unnecessary.

The current system works because we consult beyond the self-styled stakeholders and experts. The committees of the Parliament recognise that advice, information and support are available and that policy development is going on all around us. The Government is confident that it can harness that in the best interests of our communities. In addition, the committee is able to call in as it wishes evidence from relevant persons, including communities ministers and our officials, on the operation of the planning system.

I ask members not to support amendment 216 not on the basis that it proposes something that we are reluctant to do, but on the basis that it proposes something that we already do: it will duplicate existing procedures and is, in my view, overprescriptive and would not materially improve the efficient operation of the planning system. I ask the committee to reject it.

Donald Gorrie: I am glad that the Executive is pursuing good advice. From what the minister says, it seems that the only source of advice is groups that are supported by the minister. My objective is to have available to everyone good quality technical advice that does not emanate just from the Government. People, rightly, have a certain suspicion in respect of aspects of life about which the Government has a monopoly of information and technical advice. There is a need for a system that would provide really good advice to everyone—councils, groups that are involved in planning, MSPs and so on—not just to the Executive. Therefore, something like what I propose is highly necessary, so I wish to press the amendment.

The Convener: The question is, that amendment 216 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)
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 8, Abstentions 0.

Amendment 216 disagreed to.

Section 31—Arrangements with respect to business improvement districts

The Convener: Amendment 221, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 221 will allow for a group of businesses that may not all be geographically adjacent to one another to participate in a single business improvement district. The amendment makes it plain that that option will exist. We would expect most BIDs to function within a discrete geographical locality, but businesses that want to take a common approach but are not geographically adjacent may wish to form a unified BID. The amendment will remove any ambiguity from the bill. Businesses that wish to participate in a BID might have felt unable to proceed because of the earlier apparent restriction. One of the existing pilot projects in business parks in Tillicoultry, Alloa and Alva is already functioning in that way. Under section 32 of the bill, joint arrangements can be implemented for a BID to span more than one local authority area.

I move amendment 221.

Amendment 221 agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Additional contributions and action

The Convener: Amendment 246, in the name of David McLetchie—whom I welcome to the meeting—is grouped with amendment 247.

David McLetchie (Edinburgh Pentlands) (Con): It is a pleasure to be here and to listen to the discussions on the amendments.

As we all know, small and large businesses voluntarily contribute to many town and city-centre management schemes throughout Scotland. Those businesses, working in partnership with local councils and communities, are often the catalyst for excellent ideas—such as ideas about streetscaping, floral decorations and closed-circuit television systems—for improving the environment in town and city centres. In many ways, the existing voluntary schemes are the forerunners of the proposed business improvement districts that will be enshrined in statute if the bill is passed in its present form.

The fundamental difference between such voluntary schemes and a statutory business improvement district scheme is the element of compulsion. Without that element, there would be no need to legislate on the matter. The rationale behind section 33 of the bill is that it will facilitate the imposition of a compulsory levy on businesses that would not otherwise be prepared to contribute voluntarily to the financing of the arrangements that are set out in the BID scheme. The purpose of my amendments 246 and 247 is to reinstate the voluntary principle by removing the element of compulsion.

We are all aware that small and large businesses throughout Scotland already make a significant contribution to the cost of financing local services through business rates, to the tune of some £3 billion per annum. It is wrong that businesses should be subjected to an additional compulsory levy that goes against the principle of reducing business taxation, which was of course—I say to the minister—first championed in Parliament by the Conservative party and was finally taken on board by the Scottish Executive in another welcome conversion to our way of thinking. If a scheme is good enough, it will attract the necessary support. A compulsory BID levy is simply another stealth tax. I invite members to support my amendments.

I move amendment 246.

13:15

Scott Barrie: I draw members' attention to my declaration in the register of members' interests. I am a director of Dunfermline and West Fife Town Centres Management Limited.

The committee has not taken any direct evidence on the BID proposals in the bill, because they went to the Local Government and Transport Committee, but I think that the development is exciting. David McLetchie over-egged his reservations about it by omitting to inform members that there will be no compulsion for businesses to be part of a BID unless that has been agreed to in a democratic vote by local businesses. That is crucial because we can regenerate our town centres only with the co-operation of everyone. However, some businesses might be more reluctant than others—if they do not want a BID to be set up, they can make clear that view in a vote. Other businesses would then make their pitch and there would be a discussion.

I do not think that people should be able to opt out of making financial contributions, given that if the BID has been approved by the majority, it will benefit everyone, not just a select few. It is important not only that the BID have the full support of everyone in the area but that people be asked to make a small contribution, given that they will see a direct return on it. I do not see why the cost should fall on those who are more progressive and have at heart the interests of our town centres.

Christine Grahame: I take the same tack as Scott Barrie. It appears that one business could veto the BID. I am mindful of what used to happen in tenements when one owner—usually the one on the ground floor—would not contribute to roof repairs because it was not raining on their head. People often had a huge battle to get the roof repairs done or the stair improved, but when the work was completed everyone benefited from it. I know that that situation has been turned around.

I ask Mr McLetchie to address that issue. Amendment 246 states:

"No person is to be required to make a financial contribution or take action for the purpose mentioned in subsection (1) unless that person has consented to the making of the contribution or, as the case may be, the taking of the action."

That seems to mean that one business owner could just say, "I'm not doing it," but, as Scott Barrie said, they would still benefit from the improvements.

We do not always get what we want in life. If the majority decides something, one has to accept that that is democracy and go with the flow.

Patrick Harvie: I read amendments 246 and 247 with an open mind. I have similar concerns about the operation of BIDs as they are provided for in the bill as it stands. The only direct interest that I have in this is that I am a director of a small—growing—arts festival, which has premises in an area in which this sort of scheme might materialise one day. We would be quite into the idea of benefiting from improvements in the area. However, I am concerned about how the operation of a BID might impact on struggling small businesses and organisations whose aim is not to make a profit.

I would like to hear from the minister about the Scottish ministers' power to give guidance about the contributions that would have to be made. If the contributions are to be decided according to a scale of profitability or turnover, such that small businesses are not required to make a contribution until their profits reach a certain threshold, and if it is about the ability to pay, I would be quite satisfied. There is a danger that a few small businesses might be in an area that is dominated by profitable large businesses. I would like to see such small businesses get the benefits of improvement of the area, but it is reasonable that businesses' financial contributions be based on their ability to pay.

Dave Petrie: I echo what David McLetchie said about compulsion. We are already overburdened with taxes and business rates. I go along with amendment 246; it is important that small businesses be protected.

On amendment 247, if there is to be a charge, the user of the premises, not the landlord, should be burdened with the cost.

Johann Lamont: Amendment 246 is not only unnecessary but misconceived in relation to section 33; indeed, I think that the member is simply trying to undermine the whole BID policy. This might be obvious, but I point out that if the scheme were voluntary we would not have a problem and would not be considering other approaches. The fact is that some of our town centres require more than they are receiving at the moment.

The whole point of BIDs is that businesses can decide for themselves whether they want to set up a BID and then work together for the benefits that it can bring. Of course, in preparing a BID proposal, they need to consult and seek the agreement of their local council.

I understand that some businesses are concerned about what a commitment to a BID will entail. In particular, I am aware of reports in some quarters that the BID levy might be as much as 10 per cent of rateable value. However, our guidance makes it clear that the levy should usually be no more than 1 per cent of rateable value. Indeed, the levy will be stated in any BID proposal that is voted on. We are also working with the pilot BIDs to find not only ways in which BID boards might raise funds other than through the levy but—just as important—ways in which they can help cut businesses' costs.

I am also aware of some businesses' concerns that councils might reduce their service provision but then seek to reinstate it with funding from the BID levy. We have taken steps to guard against such an outcome. Secondary legislation that we will introduce will oblige councils to provide in advance of the BID ballot a list of their current service provision in the BID area so that businesses can, before they vote, see exactly what the council plans to provide. Furthermore, we have made it clear that the BID board should involve the council fully in setting up the BID.

A strong local business sector will benefit not only businesses but the council and wider BID area. In fact, experience from south of the border

is that some councils have actually increased—not reduced—services that are provided to BID areas.

Beyond fundamentally affecting the operation of BIDs, the proposal in amendment 246 would simply add further bureaucracy by requiring not only that a ballot be held but that every business issue a written undertaking that it will pay the levy for the duration of the BID period. The amendment would also undermine the financial viability of the BID proposal and is unfair because it would mean that some businesses in the BID area would have to subsidise others. In short, it would substantially undermine the BID arrangements.

Amendment 246 also seeks to allow any organisation to opt out of any payment for a BID project even after the project has been properly approved and agreed by other businesses and groups in the area, under the required voting procedures. That would be unfair. We believe that businesses will benefit from being part of a BID. Based on experience elsewhere, the majority of business organisations in Scotland agree with that view.

Amendment 246 would undermine the BID policy and is unnecessary for all the reasons that I have given. As a result, I ask Mr McLetchie to seek to withdraw it.

Amendment 247, which is also in the name of Mr McLetchie, seeks to restrict payment for BID projects only to occupiers, and to permit owners in a potential BID area to be excluded from the levy. The bill already allows for owners to be excluded, but only if the BID proposer considers that to be the best approach for the local area. We believe that that is the right approach. The whole philosophy behind BIDs is that businesses themselves decide what they want, so BID boards should have flexibility over who is invited to participate in the ballot and in the BID project.

Both the BIDs working group that we set up, which contained public and private sector representation, and the majority of responses to our public consultation earlier this year urged us to legislate for owners to be part of BIDs. Their participation will allow BID projects to be stronger because a greater range of interests will be involved, and will reduce the risk that owners will benefit from a successful BID project in the form of higher rental values at the expense of occupiers who pay the levy. I therefore ask the committee to reject amendment 247.

David McLetchie: I thank members for their contributions to the debate on the amendments. Amendment 246 is certainly not misconceived, although the minister is quite right to say that by reinstating the principle of voluntary payment it would undermine the principle of compulsion in this element of the bill. However, in response to Christine Grahame, I say that it does not seek to prevent people from drawing up, participating in or even vetoing BID schemes. It would simply determine who will contribute to their cost.

People have said that the BID policy is democratically conceived. However, businesses in Scotland already pay out a substantial amount in taxes as a result of democratic processes. After all, owners and employees of businesses participate in a democratic process that determines the composition of the UK Government, the Scottish Parliament, the Scottish Executive and, indeed, our councils. Those bodies, which have been elected through democratic processes, determine business taxes such as corporation tax, VAT and business rates.

The policy seeks to create a subset of businesses in a particular area that happens to be called a business improvement district and to say that, whether they like it or not, certain organisations and businesses in that geographic subset will have to pay over and above what they already pay to the national Exchequer through corporation tax and the like and to local council exchequers through business rates. It is quite wrong to burden businesses in that way.

On amendment 247, which I should have addressed in my opening remarks, the issue of attributing the business improvement district levy to both landlord and tenant was discussed at the Local Government and Transport Committee, of which I am a member and which was the secondary committee on the bill. I note that, in paragraph 643 of its stage 1 report on the bill, the Communities Committee concurred with the view

"that the system should be developed in such a way as to ensure that landlords and property owners do not pass the costs of a BID levy on to their tenants."

Moreover, in his evidence to the Local Government and Transport Committee, the minister at the time indicated that the Scottish Executive was in discussions with Her Majesty's Government about creating a mechanism for apportioning a BID levy between landlord and tenant.

As I said in the stage 1 debate on the bill, the proposal for apportioning a BID levy between landlord and tenant is naive nonsense that betrays a total lack of understanding of how the UK commercial property market works. The cornerstone of the system is the full repairing and insuring lease, under which all revenue costs associated with a property, including business rates, repair costs and insurance premiums, are attributed to and paid by the tenant in addition to the rent that is prescribed in the lease. The purpose of a full repairing and insuring lease, which is sometimes known as an investment lease, is to ensure that investors in commercial

property achieve a pure income return from their investment. It is against such a return that investment proposals across the UK are judged and assessed.

I have absolutely no doubt that, as drafted, most commercial property leases already attribute responsibility for full payment of a BID levy—both the landlord's share and the tenant's share—to the tenant. I also have no doubt that if the possible apportionment of a BID levy is a feature of the secondary legislation that will flow from the bill, new commercial leases for commercial property in Scotland will make it quite explicit that the tenant has to pay the landlord's share.

In that case, the Scottish Executive will be able to enforce payment of the landlord's share of a BID levy only by making it explicit that it is illegal to contract out of that provision. I simply do not believe that the Executive will be foolish enough to do that, because such a course of action will disrupt the smooth operation of the UK commercial property investment market and make the holding of Scottish properties in an investment portfolio less attractive to investors. In the long run, that must be damaging.

Evidence to the Local Government and Transport Committee made it clear that no such apportionment of a BID levy is permitted in the English BID legislation. For all the reasons that I have outlined, such a model makes eminent sense and should be followed in Scotland.

On that basis, I will move amendments 246 and 247.

The Convener: You have already moved amendment 246, Mr McLetchie. I need to know whether you intend to press it.

David McLetchie: I am a very moving person, but I will press amendment 246.

The Convener: The question is, that amendment 246 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)
Home Robertson, John (East Lothian) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

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

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

Amendment 246 disagreed to.

The Convener: On this occasion, Mr McLetchie, it appears that you were not moving enough.

Amendment 247 moved—[David McLetchie].

The Convener: The question is, that amendment 247 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)
Home Robertson, John (East Lothian) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

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

The Convener: The result of the division is: For 1, Against 4, Abstentions 4.

Amendment 247 disagreed to.

Section 33 agreed to.

Sections 34 and 35 agreed to.

The Convener: This seems to be a good point at which to stop today's stage 2 consideration of the Planning etc (Scotland) Bill. We will conclude our consideration of the bill next week.

Meeting closed at 13:31.

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