

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 25 June 2008

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

13th Meeting 2008, Session 3

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Karen Gillon (Clydesdale) (Lab)
*Jamie Hepburn (Central Scotland) (SNP)
Des McNulty (Clydebank and Milngavie) (Lab)
*Peter Peacock (Highlands and Islands) (Lab)
*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Bill Kidd (Glasgow) (SNP)
Nanette Milne (North East Scotland) (Con)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
David Stewart (Highlands and Islands) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

Veronica Burbridge (Royal Town Planning Institute in Scotland)
Louise Feenie (Scottish Government Housing and Regeneration Directorate)
Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)
Kirsten Simonnet-Lefevre (Scottish Government Legal Directorate)
Jim MacKinnon (Scottish Government Directorate for the Built Environment)
Ian Strachan (Scottish Government Rural Directorate)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERK

Mark Roberts

LOCATION

Committee Room 1

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 25 June 2008

[THE CONVENER *opened the meeting at 10:02*]

Subordinate Legislation

Licensing of Animal Dealers (Young Cats and Dogs) (Scotland) Regulations 2008 (Draft)

The Convener (Roseanna Cunningham): Welcome to the committee's 13th meeting in 2008, and our final meeting of the term. I remind everyone present to switch off the wireless element of their mobile phones and pagers, so that the sound system is not interrupted by buzzings and vibrations. We have received apologies from Des McNulty. I understand that this morning there are traffic difficulties in Edinburgh that may be holding up other members.

Agenda item 1 is consideration of the draft Licensing of Animal Dealers (Young Cats and Dogs) (Scotland) Regulations 2008, which are subject to the affirmative procedure. We have with us the Cabinet Secretary for Rural Affairs and the Environment and his officials. I welcome Richard Lochhead, who is accompanied by Ian Strachan, head of the animal welfare branch of the Scottish Government's rural directorate, and Kirsten Simonnet-Lefevre, a solicitor in the rural affairs division of the Scottish Government's legal directorate. Christine Grahame, the member who initiated the regulations, wanted to be here. However, she is the convener of the Health and Sport Committee, which is meeting at Murrayfield, so her ability to pop in even for five minutes is non-existent. In other circumstances, she would have been here.

Members have copies of the draft regulations. The Subordinate Legislation Committee's report on the regulations has also been circulated. Under item 1, members are allowed to discuss and to ask questions about the regulations. We will then move to a formal debate on the regulations, which we hope will be shortened considerably by the previous discussion. Officials may contribute at this stage but not during the formal debate. I invite the cabinet secretary to make a brief opening statement.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): Thank you, convener. It is a pleasure to be here.

The regulations aim to control the trade in puppies and kittens. There has been considerable concern about the way in which those animals have been reared and transported, especially—but not exclusively—those that have been reared in and transported from Ireland. Unfortunately, there is nothing that we can do about how the animals are reared outwith Scotland, but we can take steps to ensure that their welfare is protected once they arrive in Scotland.

The regulations will require anyone who resells more than two puppies and kittens under 84 days old over a 12-month period to obtain a licence from the local authority. Any dealer who does not have premises in Scotland can obtain a licence from the City of Edinburgh Council. A licence will remain in force for a maximum of three years. An exception will be made for people who hold a pet shop licence.

Licensed dealers will be able to sell puppies and kittens only to other licensed dealers, licensed pet shops or licensed dog-rearing establishments. In order to sell directly to members of the public, dealers will have to obtain a pet shop licence or dog-rearing licence.

Many of the animals that are born in puppy farms are incorrectly weaned and are susceptible to every infection around. Many of them have behavioural problems, because they have not been given proper care and attention. Licence holders with premises in Scotland who take possession of such young animals will have to keep them separate from all other animals for 10 days before they may be resold. That is very important, as it allows time for the manifestation of any behavioural problems or health issues—and, if necessary, for treatment by a veterinary surgeon.

Provision is made in the regulations for the licensing authority to attach conditions to all the licences, many of which will help to secure the welfare of the animals. For example, it will be an offence for licensed animal dealers to sell an animal of under 12 weeks and to transport one of under eight weeks, unless it is accompanied by its mother. All animals must be examined by a veterinary surgeon in the first 24 hours of their 10-day separation period, and they must be treated for any health problems. That will address the concerns of the Scottish Society for the Prevention of Cruelty to Animals and other organisations that have heard complaints from members of the public about the health problems of puppies and kittens that have been sold by dealers.

Other conditions will require pet dealers to give each animal a unique identification number, to maintain records and to provide validation of their licensed state when they conduct sales. Those licence conditions should ensure that the young animals being sold are healthier and happier. In

the event that they are not, a dealer can be held accountable.

Enforcement of the regulations is for local authorities. Anyone failing to comply with the provisions will be liable to a fine of up to £2,500 and/or up to three months' imprisonment.

I do not propose to refer to all the detail of the legislation, but I will do my best to answer any questions relating to it.

The Convener: Thank you. This item should principally be for questions of clarification. Argumentative questions are probably best dealt with as part of the debate.

John Scott (Ayr) (Con): Minister, I draw your attention to the comments that were made by the Subordinate Legislation Committee. Are you happy about the criminal liability issue, as covered in paragraph 8 of its report? It says:

"the meaning and effect of the offence provisions as a whole could be clearer."

The Subordinate Legislation Committee also noted that a "reasonable excuse" defence is acceptable for the offence of making a false statement. Are you setting a precedent in law, whereby a reasonable excuse has now become an acceptable defence, which it was not before?

After you have addressed those points, could you also tell us about the licensing scheme? By your own admission, nothing can be done about animals that are reared outwith Scotland. I refer to paragraph 13 of the Subordinate Legislation Committee's report. I appreciate and agree with the sentiment behind the regulations but, if it is not possible to inspect premises outwith Scotland or to do anything about them, what can you do? The Subordinate Legislation Committee states that the drafting of the regulations

"appears to be defective in so far as it purports to provide for a licensing regime involving inspection"

of persons whose premises are outside Scotland. The regulations imply that such premises will be inspected as well.

Richard Lochhead: I will address the latter point, before handing over to Kirsten Simonnet-Lefevre from the legal directorate, who will address your first point.

It is clear that we do not propose to apply the regulations to premises outside Scotland; the regulations make it clear that the provisions apply to premises in Scotland, although people who do not have premises in Scotland still have to apply for a licence if they wish to trade in Scotland. We believe that the position is made clear elsewhere in the regulations, over and above the provision to which the Subordinate Legislation Committee referred, so we are content on that point.

If you do not mind, I will hand over to our legal adviser to address your first point.

Kirsten Simonnet-Lefevre (Scottish Government Legal Directorate): We considered that the drafting of the offence provisions was clear, because we stated in each case where an offence could take place. To avoid repetition and to keep the regulations concise, we put all the penalties in regulation 17, which deals with penalties for different levels of offence. We do not necessarily agree that the offences are unclear.

As for the reasonable excuse defence, we had to weigh up which penalty was appropriate to each offence. The general guidance that we follow is to use strict liability only for more serious offences. In the regulations, the more serious offence is that of obstructing an inspector or someone who is assisting an inspector. We kept that offence subject to strict liability and decided that it was appropriate to use the qualification of having a reasonable excuse for the other offences, because a person could be acting in error or could have received and passed on in good faith incorrect information about animals, for example.

John Scott: I am interested in the reasonable excuse concept. Are we establishing a new concept in law? As the cabinet secretary is responsible for other agricultural regulation, I hope that a reasonable excuse will become acceptable for farmers who do not fill in a subsidy claim form accurately, for example. The concept of a reasonable excuse is new to me.

Kirsten Simonnet-Lefevre: I do not think that the concept is new overall; it has been used before.

The Convener: The offence in question is knowingly making a false statement. What might be a reasonable excuse for knowingly lying? If a person knows that they are making a false statement, what might be an excuse for that?

Kirsten Simonnet-Lefevre: I cannot think of an example off the top of my head.

The Convener: If the offence was making a false statement, one could see how someone might err because they did not realise that a statement was false. However, when the offence is knowingly making a false statement, what does "reasonable excuse" mean? I am curious about why it was thought appropriate to put that in the provisions.

Ian Strachan (Scottish Government Rural Directorate): The defence of reasonable excuse applies to all the offences and not just to the offence of making a false statement, on which I agree with you.

The Convener: The offence is knowingly making a false statement.

Ian Strachan: I agree with you—I can think of no reasonable excuse for knowingly making a false statement. However, the reasonable excuse defence applies to all the offences. For example, one provision is that it is an offence to have puppies or kittens on the premises without their mother if they are under eight weeks old, but a reasonable excuse for not having the mother there would be that she had died.

The Convener: Thank you, but that does not answer the question. My question is what would be a reasonable excuse for knowingly lying. I understand the concept of a reasonable excuse when inspectors turn up the day after the parent has died, for example, but what could possibly be a reasonable excuse for lying—that someone does not want to be caught?

Ian Strachan: The courts would decide whether somebody had a reasonable excuse for deliberately making a false statement. I agree that such cases would be few; I cannot think offhand of such a case, unless a gun was being held to somebody's head to force them to make a false statement.

Richard Lochhead: Convener, I take your point, which is valid. Two issues are involved. Ian Strachan said that the reasonable excuse defence applies to all offences in all circumstances, so it does not apply only to the offence of knowingly giving wrong information.

The Convener: We do not raise the point in relation to other provisions, because reasonableness is a well-known concept in law. However, I do not know whether reasonableness in law applies to lying deliberately. I cannot imagine a court thinking that someone has a reasonable excuse for perjury. Why is that defence there for the specific offence of knowingly making a false statement?

10:15

Richard Lochhead: It is there for the reasons that we have outlined, which apply to the rest of the provisions.

Bill Wilson (West of Scotland) (SNP): You might be aware of a company that recently opened in London, which rents dogs to individuals and which is proposing to open an office in Scotland. The regulations deal with the sale and resale of dogs, but if an individual or dealer rents dogs, does the legislation cover them, or is there a loophole?

Richard Lochhead: My understanding is that the regulations refer to trading, as in buying and selling.

Ian Strachan: The legislation does not cover the renting of dogs. I am aware of the flexpetz scheme

that you are talking about. The regulations apply only to the buying and selling of dogs and cats under 84 days old. The company to which you refer rents out adult dogs, so the regulations do not cover it. In fact, no regulations cover that particular activity, although the general provisions of part 2 of the Animal Health and Welfare (Scotland) Act 2006 would apply—particularly the provisions on the duty of care.

Bill Wilson: In that case, I urge the cabinet secretary to consider bringing forward legislation on the renting of dogs.

Richard Lochhead: If that is the committee's view at any stage, it can bring it to my attention.

The Convener: Why is it deemed necessary to allow the sheriff power to override mandatory licensing conditions?

Kirsten Simonnet-Lefevre: That is a policy issue. From memory, I think that we want the sheriff to be able to change all the conditions. This is a new scheme, and there are new situations that need to be clarified. We have no precedent for a scheme of this nature.

The Convener: So any sheriff at any time could choose to change what we have laid down as the appropriate licensing conditions?

Kirsten Simonnet-Lefevre: If that is necessary.

John Scott: I presume that that will then become the precedent.

Kirsten Simonnet-Lefevre: Yes.

The Convener: Has any thought been given to what would happen if cases go to court and changes are made to the licensing conditions beyond anything that has been envisaged in the regulations? We are putting into place legislation that says that the Parliament has a view on the licensing conditions for dealers in a particular category of animals. We make that view clear and we legislate for it, but here we are saying that any sheriff can change it at any point.

Kirsten Simonnet-Lefevre: Yes.

The Convener: Is that what we are saying?

Kirsten Simonnet-Lefevre: Yes.

John Scott: I presume that you can envisage such a situation. In what circumstances would a sheriff change the conditions? There seems to be an expectation in the regulations that the sheriff will exercise their power to change them. Can you envisage circumstances in which you think that the conditions might be inadequate and in which sheriffs could alter them to improve them?

Kirsten Simonnet-Lefevre: I expect that a sheriff would alter the licensing conditions only if doing so was required by a situation that is not

already covered by the conditions that are listed in the regulations.

The Convener: Do you have, in your head, any hypothetical example where that might be appropriate?

Kirsten Simonnet-Lefevre: No.

The Convener: None?

Kirsten Simonnet-Lefevre: No.

Bill Wilson: Have you laid down any conditions that you would definitely not want a sheriff to alter?

Richard Lochhead: The sheriff will have to work within the context of the regulations, but he would be able to alter the conditions of licences issued under the regulations. However, it is clearly difficult to predict what view a sheriff would take in enforcing the regulations.

Jamie Hepburn (Central Scotland) (SNP): You have spelled out some of the provisions in the regulations—for example, there must be a veterinary inspection within 24 hours of the start of the separation period, and animals under eight weeks must not be separated from their mother—so I presume that they are an advance on existing law and that there is a legal vacuum at present in those areas. Can you or your officials set out where the current gaps in the law are? In what ways does the current law allow animals to be mistreated?

Richard Lochhead: The regulations arose from Christine Grahame's proposed member's bill, which attracted cross-party support. At the time, more than 40 MSPs from across the then six parliamentary parties signed up for her bill because of the lack of regulation of the trade in puppies and kittens, particularly those that come here from outwith Scotland and are sold on. The loophole relates to those who buy young puppies and kittens with a view to selling them on. The view is that the animal health and welfare aspects of that trade are such that animals suffer.

Jamie Hepburn: Do you have any examples?

Richard Lochhead: Often, people are left with young puppies and kittens that have been sold to them and which then become ill or die because the animals had received no veterinary care. That situation is not regulated at present, but it would be regulated under the regulations. People buy young puppies or kittens having looked at adverts in newspapers and phoned a mobile number. A dealer may have several mobile numbers; they change the mobile number each time they go through the selling process. They might go over to Ireland, bring back a litter, get a new mobile number and put that in the newspaper. People then buy an animal from the litter that becomes ill and perhaps dies. Clearly, animal welfare issues

are involved, as well as the fact that the purchaser has no way of tracing the trader and holding them to account. That is the gap in the law. Currently, breeding establishments, pet shops and so on are licensed, but the trading aspect is not.

Jamie Hepburn: So this is not just an animal welfare issue; it is also about protecting those who purchase.

Richard Lochhead: The purchaser will be protected as well.

Peter Peacock (Highlands and Islands) (Lab): The minister has obviously brought forward the regulations in good faith and is attempting to fulfil a decision of Parliament in trying to make progress on them. However, given that the Subordinate Legislation Committee has raised some important issues of principle, and given that the minister has probably detected some uncertainty among committee members about the proposals, is there any particular reason why the regulations must be progressed right now? Would any damage be done if the regulations were looked at a bit more closely to try to address the points of concern and then brought back to the committee? Is the timescale driven by anything in particular, other than the desire to get the regulations approved and implemented?

Richard Lochhead: Clearly, we believe that there is public demand, and a parliamentary appetite, to get the regulations through. However, we will take on board the committee's views. If you have serious concerns, we will have to go away and reflect on that. On the timescale, we hope to have the regulations in place by November.

Karen Gillon (Clydesdale) (Lab): I have some serious concerns about the regulations because of the report from the Subordinate Legislation Committee and some of the explanations that have been given, particularly in relation to the reasonable excuse provision, which has been highlighted. I am still not clear why that must apply to all offences under the regulations. I am not comfortable that a reasonable excuse defence is suitable in the context of someone knowingly telling a lie; I am uncomfortable with seeing such a defence in legislation that we pass as a Parliament. I am not clear why the minister could not amend the regulations to include a provision that said something like "that defence applies to all offences bar this one". I think that it sets a dangerous legal precedent if we say that, as a Parliament, we accept that there may be a reasonable excuse for telling a lie or knowingly giving a false statement. I certainly want that provision to be amended before we take a position on the regulations.

The Convener: Right. Cabinet secretary, before we move to agenda item 2, you might want to

reflect on some of the concerns that have been raised. The timescale is such that we need to report on the regulations by 1 September, which means that the committee must make a decision today one way or another—that is, if the motion is moved.

Peter Peacock: Can I ask a procedural point about that?

The Convener: Yes.

Peter Peacock: Is it necessary for the motion that is on the agenda to be moved? If it were not moved, would that get around the 1 September deadline?

The Convener: The motion does not have to be moved.

Peter Peacock: Would that relieve us of the 1 September deadline?

The Convener: Yes, but a new instrument would need to be drafted.

John Scott: Could the regulations be brought back to the committee in September?

The Convener: A new instrument would have to be laid in September.

Richard Lochhead: I am happy to take the regulations away and address the concerns that have been raised over the phrase “reasonable excuse”, if the committee would find that helpful. The timetable is flexible to a degree; this is not like other pieces of legislation. If the committee would find it helpful, I will not move the motion and we will address the legal considerations.

The Convener: That might be helpful in the circumstances. I suggest that your legal team think about some of the legal aspects and take on board the issues that were raised in the Subordinate Legislation Committee’s report.

Richard Lochhead: We are happy to do that.

The Convener: They are reasonable—if I may use that term—questions to ask.

Agenda item 2 is the formal debate on the motion. This is the point at which officials cannot participate. I invite the cabinet secretary to move the motion—or otherwise.

Richard Lochhead: I will not move the motion, with a view to addressing the concerns that members have raised. The purpose of the parliamentary process is for committees to highlight such concerns and for ministers to respond.

The Convener: I thank the cabinet secretary for listening to members, taking on board their concerns and responding in that way. I also thank him and his officials for their attendance.

National Scenic Areas (Scotland) Regulations 2008 (SSI 2008/202)

Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2008 (SSI 2008/203)

Register of Sites of Special Scientific Interest (Scotland) Regulations 2008 (SSI 2008/221)

Registration of Fish Farming and Shellfish Farming Businesses Amendment (Scotland) Order 2008 (SSI 2008/222)

The Convener: We have four negative instruments to consider under agenda item 3. Members will be glad to know that no concerns have been raised about any of the instruments and no motions to annul have been lodged. Does anybody have any comments to make on any of them?

Members: No.

The Convener: Do we agree not to make any recommendations in relation to the four instruments?

Members *indicated agreement.*

Rural Housing Inquiry

10:28

The Convener: Agenda item 4 is two separate evidence sessions for our rural housing inquiry. The issue of planning has been raised frequently by witnesses in our inquiry and our first witness is Veronica Burbridge, the national director of the Royal Town Planning Institute in Scotland. The committee has received a written submission from her, so there is no need for an opening statement and we can move straight to questions. We have allowed roughly until 11.15 for this session—which is not to say that it will last for that length of time, although it may.

Peter Peacock: Thank you very much for your evidence. From the evidence that we have taken so far, I have gained the impression—I know that this is contestable, but it is partly supported by the Organisation for Economic Co-operation and Development's report on rural Scotland—that, generally speaking, we have far too rigid and limiting a view about housing in the countryside in Scotland. In effect, we take an urban view of how rural Scotland ought to look, as a consequence of which we place far too many restrictions on development in rural areas. How do you react to that as a general proposition?

Veronica Burbridge (Royal Town Planning Institute in Scotland): How do I react to the statement that we have a rigid view of planning?

Peter Peacock: Do our planning policies take too rigid a view, which means that we discourage the development of housing in the countryside although it ought to be entirely acceptable?

10:30

Veronica Burbridge: I think that the position varies a lot from one area to another. The design of housing in the countryside worries me, although that matter is perhaps marginal to your interests in your inquiry. We need to address the design of housing in the countryside if we want to maintain our distinctiveness of place and our Scottishness. There are issues relating to the volume of house building on the edge of settlements. We could do a lot of creative work on design issues so that people do not take the same approach to housing.

Peter Peacock: So, from your point of view, the pattern of the approaches that we have taken to the zoning of land, permissions for individual houses and restrictions on them has been more to do with the poor quality of designs in the past and the look of houses in the countryside than with whether houses should be built. Is design fundamental to your view of the approach to allowing more housing in the countryside?

Veronica Burbridge: We need to consider three things. A development must be the right development in the right place and of the right quality. I have started at the quality end. The housing needs assessment must be considered in thinking about having the right development in the right place. A close link between the development plan and the housing strategy is needed, but approaches will vary from area to area. What is done in a crofting area will be different from what is done in the Borders.

Peter Peacock: In the first few pages of your written evidence, you say:

"There is a need for closer links between the National Planning Framework and the Rural Development Programme ... Additional guidance might include further consideration of village plans and design statements ... greater attention should be given to investigating public sector land release, land banking ... implementation of any policy to secure affordable housing will require close collaboration between public housing providers and the Planning Authority."

You also say that there should be further guidance in the form of a revision to planning advice note 74 and that there should be further consideration of housing market partnerships and design.

Taken together, the comments in your written evidence could be seen as a pretty damning indictment of our current approach to rural land use and housing supply in rural areas. You mention a series of inadequacies that have not been pulled together at the national level. Is that a fair interpretation of your view?

Veronica Burbridge: Inadequacies probably exist at every level. We are in the process of addressing them. We are in a transitional period.

On the national planning framework, I thought that the committee would be particularly interested in the link between the use of land in Scotland's rural areas and food security policies, what we should do at the national, strategic level to protect good-quality agricultural land, and the use of land for agriculture versus its use for fuels, for example. Our written evidence goes down through the various levels and identifies the need at the local development plan level for a close read-across to the rural housing strategy. As you have said, below that are issues to do with design, the division between planning and building control mechanisms and how both sets of mechanism address sustainability issues in housing.

Our written evidence from which you quoted was produced in June this year, but the background paper, which is the annex, is a general policy position paper that was finally published in April last year, I think. We will revise that once Scottish planning policy 3 is completely revised.

Peter Peacock: Your comments still amount to a pretty clear indication of the inadequacy of the current situation, which has probably endured for quite a number of years, and of the fact that we have failed to get to grips with land use in rural areas. The committee has just reported on flooding and has recommended that some land be kept for natural flood management, which may conflict with housing being provided in such areas. Equally, you have mentioned the implications of food security for land use. Are you saying that we have an inadequate land use strategy and that if we are trying to develop recommendations that will have an impact on the supply of affordable housing—as we are doing—a much clearer national view of rural land use must be formed quickly?

Veronica Burbridge: The right mechanisms for that are in place through the rural development programme and its regional committees but improvements are needed in working methods and partnership working. I did work on rural housing when I worked in the Scottish Office in the 1970s, and many of the issues then were pretty much the same as they are now, such as affordability and the impact of second homes.

Peter Peacock: Affordability is partly about the price of land, which is caught up with how much land is or can be released for housing and, therefore, is about zoning and planning policy. Some people argue for a more liberal approach to housing in the countryside; they say that we should be less concerned about having it there. Would such an approach have an effect on land supply and, therefore, pricing?

Veronica Burbridge: Land supply is one important factor but, as I point out in my written evidence, it must be taken alongside many other factors, including the macroeconomic climate. Particularly in rural areas, it also needs to be considered at a local level. Our understanding of rural housing markets needs to improve because we need to know how local an area the issues need to be addressed in. For instance, the demand for social housing might need to be dealt with in a very specific local area.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I was interested in your comments about quality and style of housing. We are all interested in having conservation areas to preserve the ambience of particular locales, but you seem to be putting a lot of emphasis on the quality and style of housing outside conservation areas. If somebody who owns land that is zoned for housing and is not in a conservation area wants to build houses on that land, why should somebody else tell them what style of house they should have? Why is that important?

Veronica Burbridge: It is important to the community, and planning is about the public good as well as private benefit.

Mike Rumbles: Would that not mean that we would simply have a conservative rural Scotland in which it was possible to build houses only in a style in which other people had built them? What about eco-houses and other modern developments? Why should somebody set themselves up as the guardian of the right style of housing outwith conservation areas?

Veronica Burbridge: I do not think that there is any definition of the right style, but we need good design guidance. The institute is interested in developing planners' skills, so it approaches the issue from the point of view of resources and skills. Design has been identified as a matter on which further training is needed, and the planning development programme has responded to that need. On the wish to create sustainable and energy-efficient houses, in the light of initiatives on climate change and so on, we all have an interest in designing good-quality housing that is cheap to run, affordable and able to adopt new design ideas and initiatives.

Mike Rumbles: When someone applies to build a house, is it appropriate for planners to tell the applicant that the house is not in keeping with the style of other houses in the area? Why should planners be the arbiters of what is the right style of building?

Veronica Burbridge: Development plan policies should emerge through consultation with communities, and the policies will be put in place after discussion within the council. We have a general concern about the quality of our environments and the distinctiveness of the places in which we live.

Karen Gillon: I understand that point. In my experience, planners have not been especially good at enforcing regulations, with the result that a plethora of inappropriate housing has been built in the middle of nowhere. We now have huge houses with swimming pools that are not in keeping with the surrounding area.

I hear Mike Rumbles laughing at that. He may laugh, but in my constituency there are numerous examples of—

Mike Rumbles: I was laughing at something that Peter Peacock said to me.

Karen Gillon: I will carry on. I am interested in how the Royal Town Planning Institute advises its members on the application of guidance when planning decisions have to be made. Increasingly, planners and not elected members are the ones who make the decisions on individual applications. What role should your members play in being

more forceful when planning conditions are not kept to by a developer? Increasingly, planners do not seem to think that it is in anybody's interests to enforce the conditions.

Veronica Burbridge: Such issues will be addressed in the new planning legislation, which places a greater emphasis on enforcement—although the resources for that will have to be considered. The issues will also be addressed by the adoption of a development plan-led system and the need for a design statement, which will be worked out at policy level.

Karen Gillon: Is the new legislation robust enough? Will planners be strong enough to enforce it?

Veronica Burbridge: We will have to wait and see how robust the legislation is; we all have an interest in ensuring through the subordinate legislation and the related guidance that we have a robust system.

The Royal Town Planning Institute has a particular interest in ensuring that resources are available for planning, especially in the public sector. There is great concern about that across the professions. Tomorrow, I am meeting people from the Royal Institution of Chartered Surveyors, the Royal Incorporation of Architects in Scotland and other professional bodies that are involved in the built environment. We are all concerned about the number of professionals who will work in local government in future, partly because of the impact of single status and partly because the rewards for professionals are greater outside local government. A very important job has to be done in making local government employment attractive and in supporting our professionals as they perform that service.

10:45

The Convener: The questions about design are interesting, but I want to bring us back to affordable housing. We have heard varying evidence about whether a separate use class for affordable housing would be useful. Does the RTPI have any views on that? Could we introduce a class of land to be zoned for affordable housing that is separate from the general use class of housing?

Veronica Burbridge: That is an attractive proposition, but there are huge difficulties in the monitoring and enforcement of such an arrangement. It can successfully be done only through the involvement of registered social landlords as it is a matter of the continuing ownership of the property. A significant problem is how to maintain affordable housing in perpetuity.

The Convener: Do you see that as being inextricably tied to whether a separate use class would work?

Veronica Burbridge: Yes.

Bill Wilson: Would it be easier to zone land for rented housing, whether that is by housing association or council, rather than for houses for sale? Would that be more practicable?

Veronica Burbridge: The problem is enforcement. What would be the visible signs? Would it be covered in the title of the house? If it was owned and managed by an RSL, that might work. However, from a planning point of view, how would we know if a property had changed hands? If somebody bought a house in a zone for renting, what would the local authority look like if it decided to enforce the conditions or throw them out? That would be political dynamite on one hand and unenforceable on the other. It is unenforceable through the use class mechanism. It would have to be done through a financial mechanism, as it is not possible to use a planning tool to solve something that is not really a planning matter.

The Convener: In effect, you are saying that designating a separate use class might work for the initial build but that separate mechanisms would have to be in place to ensure the on-going affordability of that housing.

Veronica Burbridge: Yes.

The Convener: So a separate use class would not work on its own.

Veronica Burbridge: No.

Bill Wilson: That is what I was going to say.

The Convener: Was it? Sorry, Bill.

Mike Rumbles: I thought that we should be moving away from ghettoising areas and parcelling off some pieces of land for rented housing and some for housing for purchase. Is the modern idea of planning not to have integrated communities with mixes of housing within them?

Veronica Burbridge: Yes, but in a rural context we are often dealing with very small housing allocations.

Mike Rumbles: But even within a village it could be decided to zone certain areas for housing, with 25 or 35 per cent having to be rented. Is the whole concept not to have homes that are mixed together, even in small villages, so that communities are properly mixed?

Veronica Burbridge: That is correct—that is the policy. One way of making that work is to ensure that the rented or affordable housing sections are managed by a registered social landlord.

John Scott: I want to ask about a different subject. We have heard differing views about how big a barrier connection to infrastructure is to developments. What are your views on that?

Veronica Burbridge: We need to think about connections to infrastructure at two levels. When new settlements in the countryside are proposed, it is important that housing development and infrastructure are linked and considered together. For single houses and unplugged housing in remote areas, it is important that the planning system works closely with the Scottish Environment Protection Agency and Scottish Water. The new duty of key agencies to co-operate at development plan stage should improve negotiations that must take place on such developments.

Peter Peacock: When there is a proposal for a small development of a handful of houses or a single house in a remote location that is not close to obvious infrastructure for sewerage, water, roads, electricity and so on, do planners feel constrained by regulations in what they must recommend to their planning committee—or decide for themselves, if decision making is devolved? If there were different constraints to do with what is necessary for housing in the countryside, might we witness a more liberal approach and more approvals of applications?

Veronica Burbridge: Perhaps planners have felt constrained in the past, but the new arrangements with Scottish Water and SEPA should help in that respect.

Peter Peacock: For unplugged houses, how do planners feel about the constraints that they are under to secure proper quality standards that are necessary for sewage treatment and so on? Do the regulations place too many constraints on planners' ability to support housing? Might such housing be supported if we took a slightly different view on the issue?

Veronica Burbridge: I am more concerned about slightly larger groups of houses, for which urban standards of lighting, kerbs and road layout are introduced. For individual houses, the constraints depend on the policies in the development plan.

Peter Peacock: You mentioned roads and we have heard evidence on the matter. Are the regulations that apply to groups of houses too tight? Do we apply too urban a standard to small rural developments?

Veronica Burbridge: There is a tendency to do so.

Jamie Hepburn: The convener mentioned a separate use class of land for affordable housing. We do not currently have such a system, so how

can we secure an adequate supply of affordable housing? We heard from witnesses who said that some landowners or developers are sitting on land and waiting for prices to rise—it is called land banking—or are reluctant to build affordable homes, for whatever reason. What mechanisms, if any, do you advocate to encourage the release of land for affordable housing or developments that at least include an RSL housing element? Some witnesses suggested that compulsory purchase orders might be used. Do you agree with such an approach, or do you have other ideas?

Veronica Burbridge: Compulsory purchase powers exist but are seldom if ever used. A quick trawl of the legal departments in local authorities might tell you why. It is difficult to envisage the powers being used to a great extent.

We can achieve much more by partnership working. I think that the committee heard good evidence from the private sector and from local authorities, such as Highland Council, about the partnership approach that the public and private sectors are developing.

Jamie Hepburn: We have seen good examples of partnership working. What should happen in circumstances in which that is not possible, such as where a landowner is not releasing land, for whatever reason?

Veronica Burbridge: It would depend completely on the individual circumstances. In a development plan-led system, we would sort out such issues at an earlier stage, because we would have a better assessment of housing need from the housing strategy, which would then feed into the development plan. We would have all the partners around the table at an earlier stage. The hope is that we will be able to get people on board and in agreement about the local priorities, needs and solutions. We will make more progress where there is some form of local housing partnership to bring together all those interests.

John Scott: I would like to ask about the benefits and difficulties of section 75 agreements. From what I can see, there is inconsistency in their application throughout Scotland. What are your views on that? How are the commuted sum payments working?

Veronica Burbridge: We are expecting a consultation on that over the summer. I think that things are about to change. Evidence suggests that where there is a dedicated officer and a policy-based approach, much more progress is made with section 75 agreements. Some recently published research for the Government indicates that having a dedicated officer and a policy-based approach produces better results in respect of section 75 agreements.

John Scott: According to information that we have received from Homes for Scotland, many local authorities throughout Scotland have no affordable housing policy whatever. Do you share that view? It certainly came as something of a surprise to me. Homes for Scotland's evidence also suggests that there are huge inconsistencies in that regard. Why are there such inconsistencies, given that the benchmark level is that 25 per cent of a development should be allocated for affordable housing? Why do some local authorities have a benchmark level of 40 per cent and some have a benchmark level of zero?

Veronica Burbridge: The inconsistency might be due to the fact that local authorities are at different stages in local plan development. Once we have the new planning system in place, with up-to-date local development plans produced every five years, we will have a much better framework.

The conclusion in the work that we did for Murray Tosh, Sylvia Jackson and their cross-party group on affordable housing in the previous session was that the inconsistencies were related in part to the fact that planning authorities were at different stages in developing their local plans, but that policies were beginning to emerge.

John Scott: So things will become clearer and more consistent in due course.

Veronica Burbridge: We hope so.

John Scott: Is that more of an aspiration than an expectation, given that all this has been kicking around for some time?

Veronica Burbridge: If we can put in place a new, strong development plan-led system and we have resources for a dedicated officer on section 75 agreements, we will make progress.

The Convener: I want to ask a more general question. Page 3 of your written evidence to us refers to a 2003 tripartite report by the RTPI, the Chartered Institute of Housing and the Local Government Association on the need for better integrated working practices in relation to housing and planning issues. Six bullet points are included. From what is described in those bullet points, can I assume that the view of the three named organisations was that none of the things described in the bullet points was happening in 2003?

11:00

Veronica Burbridge: It was a United Kingdom report based on work done largely in the UK.

The Convener: The recommendations that you bullet pointed are, according to your submission, the ones that you think have relevance for

Scotland. In 2003, the view was that they were not in place. Is that right?

Veronica Burbridge: In a general way, yes.

The Convener: What is your view in 2008?

Veronica Burbridge: I think that we are getting there on a lot of those points.

The Convener: Which of the six recommendations have still not been taken up and on which has there been some movement?

Veronica Burbridge: The recommendation about incentives and rewards is aspirational.

The Convener: So that is not happening.

Veronica Burbridge: No, I do not think so. On the recommendation about joint working between housing and planning departments, from the evidence that you received, we know that it is happening in a number of—

The Convener: But is it happening from your perspective?

Veronica Burbridge: It is not happening sufficiently yet.

I do not think that the integration of housing and planning across strategic planning areas and community planning partnerships is happening sufficiently yet.

I do not think that the joint spatial and long-term investment strategies are happening yet, but people might be developing those in some areas.

We are still to see better co-ordination between local development plans and housing strategies, but draft guidance on the housing side is out at the moment.

I presume that the monitoring of strategic priorities for housing will be part of the new development planning system.

The Convener: In total, between 2003 and 2008, there has been movement on only a couple of those recommendations and the position on the rest of them is as it was in 2003.

Veronica Burbridge: Yes.

The Convener: That is useful. There appear to be no other questions for this witness. Thank you very much for coming in. We did not quite make it until 11.15. I suspend the meeting now for five minutes, after which we will move to the second panel of witnesses.

11:03

Meeting suspended.

11:11

On resuming—

The Convener: I welcome our second panel of witnesses: Jim MacKinnon, the chief planner, and Louise Feenie, from the Scottish Government Housing and Regeneration Directorate. I understand that Jim MacKinnon wishes to make a brief opening statement.

Jim MacKinnon (Scottish Government Directorate for the Built Environment): Yes, convener—it is really just to thank the committee for the invitation. I hope that I can be of help and that this session is less stressful than my previous appearance at committee.

The Convener: If you had been sitting here from 10 o'clock, you might not be certain about that.

Several members have indicated that they wish to ask questions.

Jamie Hepburn: I have a couple of questions about the role of the planning system, following on from Peter Peacock's question to Veronica Burbridge. We have heard plenty of evidence from previous witnesses to suggest that there is a problem with competing land use in the countryside: we need homes for sustainable communities, but we are saying that we cannot build there because of X, Y and Z—there is a range of issues. Would you like to talk about how we can balance those two things? Will the current review of SPP 3 take account of whether SPP 15 is thought to be adequate in that context?

Jim MacKinnon: The whole point of the planning system is to resolve or arbitrate between competing land uses. We are trying, through the new planning forums, to move to a genuine planned system, so that the debate is moved to the early stages of the process rather than there being discussions, debates and objections in relation to individual planning applications. That is an aspiration; I do not underestimate the difficulties in trying to achieve it.

A balance has to be met with any land allocation, because what may be the best solution in transport terms, for example, may be the worst solution in terms of flooding or the costs of water and drainage, and there might be a natural heritage interest as well. We are seeking to use the new development plan system to say that there is a requirement for X number of houses in a particular area, we have considered the competing interests and our balanced judgment is that we will go for X rather than Y. I hope that we will get there and that once we establish a pattern of future land use, the main debates about issues of principle will be over.

You mentioned the review of SPP 3. We are hoping to publish that within the next four to six weeks. We have tried to identify a new approach—in the past, planning has perhaps been unnecessarily niggardly on issues of land supply. We want the new approach generally to be more aspirational, and the debate to be less about arithmetic—figures on housing requirements and land supply—and more about delivery of the new units, which actually matters, while ensuring they are in the right place and of the right quality. That should be an important consideration for planning authorities in drawing up their development plans.

11:15

Jamie Hepburn: I have a question that pertains to a story that the members of the committee who visited Arran picked up. It relates to how we can foster a can-do attitude to building affordable housing in Scotland. When we were in Arran, we were told that a group of community activists, who were not registered social landlords, had plans to build a small number of houses on Forestry Commission land. The Forestry Commission was apparently quite willing to give them the land at a reasonable price, which would allow them to get the houses built, but the council—which was represented on the visit—came up with a list of obstacles to building houses there. It said that the road was too narrow—it asked, for example, what would happen if the bin lorry met the school bus. It did not seem to be aware that such vehicles have a reverse gear, but that is by the by. My point is that the council attached greater weight to the problems than it did to the solutions. How do we flip that around?

Jim MacKinnon: There are two aspects to that. One is the fact that the new planning system makes it a statutory requirement that when a development plan is drawn up, an action plan must be drawn up to show how the development will be delivered. We want the plan to be viewed as a means to an end rather than as an end in itself. As the example that you gave makes clear, there is a broader cultural issue about whether planning has a regulatory or an enabling role.

The key thrust for the new Government is to give planning much more of an enabling role and to make it much more supportive of development. If the answer to a particular proposal is no, the planning authority should say no early in the process, but if it is yes, it should say how the development can be facilitated. We will put through the Parliament secondary legislation on planning, but the cabinet secretary is clear that a significant culture change is needed, not just within planning authorities, but in the key agencies and the private sector. Ministers are making a determined effort to ensure that planning is viewed

as a positive and enabling activity as opposed to one that restricts and regulates. That is quite a significant challenge, which will not be met overnight.

If people come up with ideas, we would like to ensure that once they get them through the development plan system, the focus is on implementation. There may well be circumstances in which the answer is simply no, in which case people should be told that openly and frankly. However, if the problems are technical, most technical problems can be overcome. Peter Peacock asked whether the standards—those that relate to highways, for example—are too demanding and exacting. We are trying to bring about quite a significant culture change in planning, which involves moving away from a regulatory approach towards a plan-led system that has a focus on delivery.

Peter Peacock: I take you back to your response to Jamie Hepburn's first question about land supply in rural areas. Am I correct in thinking that you are saying that, hitherto, too restrictive a view has been taken of land supply in rural Scotland, broadly speaking?

Jim MacKinnon: We must be careful about making generalisations. There is some evidence—some of which is anecdotal—to indicate that there is a link between land supply and land price. What we are saying is that we should get away from fighting over the arithmetic. Some parts of Scotland—the area of the Highlands in and around Inverness and the inner Moray Firth, for example—have major aspirations as regards planning developments. When big decisions are made on developments in places such as Tornagrain, Whiteness and Delnies, we should ask how they can be delivered.

The land supply issue in rural Scotland is not so much about identifying specific sites. Most local authorities have policies for development in the countryside. It tends to be the case that, rather than the council allocating specific sites in the countryside for development, people make planning applications. However, we might want to encourage planning authorities to get away from the settlement envelope approach, which involves just putting a line round a settlement. In some cases—with a nucleated settlement, for example—it might be quite appropriate to do that, but with crofting townships, which have a straggling pattern of development, there could be general support for development, provided that it meets certain criteria, for example on layout and design.

Peter Peacock: Do you think that that message has got through to planning authorities, who from some of the evidence that we have taken appear still to feel quite constrained in a variety of ways?

Is that part of the culture change you mentioned?

Jim MacKinnon: That is part of the culture change, but in many parts of Scotland, especially in and around major cities, a more restrictive approach is quite appropriate—certainly with individual houses in the countryside. In East Lothian, for example, the settlement pattern is based on small nucleated towns and villages set among very good agricultural land. You may wish to restrict some developments there.

There is a broader cultural issue, to which you have alluded. We would quite like to use planning reforms to get across the message of planning being a positive activity. When SPP 3 is published, we would like to set a new direction and adopt a new approach in which the focus is on delivery, and move away from sterile debates about arithmetic. There is a bit to go, but the Government has clearly signalled its intention to travel in that direction.

Peter Peacock: You mentioned East Lothian—I was about to mention it myself. When we visited East Lothian, it was striking that, at one level, the local authority has been very successful in restricting development—there are clearly delineated communities and there is virtually no housing in the countryside such as we might see in other parts of rural Scotland—but there is a colossal affordable housing problem there.

People in East Lothian articulated worries about some real problems: if the approach is liberalised in any way in one community, for instance by slightly extending the delineated area, that would leave the authority wide open to appeals against refusals in other parts of its area. If I understood the council representatives correctly, they were feeling very constrained. Are they right to feel constrained? Could they afford to be slightly more liberal?

I appreciate that it is difficult to comment about one authority, but are there not similarities between East Lothian, with its particular pressures due to its proximity to Edinburgh and its pressures, and some bits of Aberdeenshire because of their proximity to Aberdeen? We might speak about other parts of Scotland in similar terms. There have, however, been entirely different interpretations of the policy.

I have two questions. First, are the differences of interpretation between authorities too wide? Should the policy be narrowed and the approach made more liberal throughout Scotland? Secondly, how do you respond to the point about appeals and local authorities' worries about defending their position if they ever relax it in relation to individual applications?

Jim MacKinnon: I do not agree with your view on the appeals situation at all. My view is that

planning decisions can be defended because, basically, they should be made in accordance with the development plan unless material considerations indicate otherwise. If there are robust policies behind the development plan, authorities can fight on the basis of those policies. If, however, an authority wishes to revise its approach in a particular area, it may do so. Decisions can consistently be based on that approach. I would like to think that reporters will respect such decisions at appeal.

East Lothian is an interesting example. It splits between west and east. The west part of East Lothian, as far out as Haddington and possibly further, is very much within the Edinburgh commuter belt. Further east, around Dunbar and Stenton, there is less commuting, and the issue is more one of sustaining rural communities. That is also the case in Aberdeenshire. There are some development areas very close to the city—within 20 or 30 miles—but once we get out to places such as Gamrie or Foggieolam we find that a different set of circumstances apply.

It is appropriate that there are differences between, and even within, authorities. You represented Highland with great distinction for many years, Mr Peacock, and you are aware of the issues in and around Inverness, which require a certain approach. Areas that have been losing population for years, including parts of Caithness and Sutherland, might require a much more liberal approach compared with somewhere within the travel-to-work area of a city, where people are trying to get major developments going and take advantage of the available services.

Peter Peacock: Developers who are keen to contribute to the increasing supply of affordable housing, whether they are registered social landlords or private developers, might find almost entirely different approaches to what would be similar land use questions if they were considered in isolation. Is that good? Is that right? Is that appropriate?

Jim MacKinnon: There should be a degree of diversity. One of the key policies of SPP 15, "Planning for Rural Development", is that it recognises the huge differences within rural Scotland. That is reflected in our guidance, and it is quite properly reflected by local authorities in their policies. The important thing is to be able to communicate what the policy is and why there are different approaches in different areas. One benefit of the restrictive policy that has applied in East Lothian for many years is that it has brought some beautiful steading conversions back into active use. Those have provided high-quality housing in locations that are already served by transport and other services.

Peter Peacock: Can I make one more point?

The Convener: Be very brief, because other members would like to get in.

Peter Peacock: One striking thing when you drive round East Lothian, as we did for a day, is that there are, for example, lots of big shelter belts between very productive fields. In other parts of Scotland there would be scattered housing, which would not be out of keeping with the rurality of the area.

Jim MacKinnon: My view—it is perhaps a heretical one for a professional planner—has always been that there is scope for significant additional bouts of development in rural Scotland. We did a planning advice note in 1991 and one of the pictures, which we made three points about, was of Skye. One is that there is no standard form of development in rural Scotland—there is nucleated and there is straggling. Secondly, development can be very much part of the countryside and it does not have to be hidden away. Thirdly, inappropriate development is a lasting eyesore.

I have no problem with additional development in the countryside—far from it—but the great danger is that if you try to do it within commuting areas, you set up increasingly unsustainable patterns of commuting by private car, which, looking at the bigger picture, is not what successive Governments have wanted to encourage. I make a distinction between rural areas that are essentially within the travel-to-work area of large settlements and cities, and areas that are more remote, where a more liberal approach to rural housing, subject to issues around siting and design, can help to sustain rural communities rather than fossilise them.

John Scott: You have said that you are happy with the inconsistencies in local authorities' approaches to rural housing. I would have thought that we should be striving for greater consistency. Given that you appear to be happy with inconsistencies, will SPP 3 at least define more clearly what we should expect?

The Convener: I wonder whether applying the two categories of rurality would be useful. I do not know whether they are explicitly defined anywhere for planning purposes. The areas that you are describing would be "accessible rural" and there are areas that are "remote rural". Would it be possible to transmit more clearly the culture that in an area that is remote rural—whether Dumfries or Stornoway—we should allow freer planning guidelines than are allowed in areas that are accessible rural?

Jim MacKinnon: I think that that is what SPP 15 and SPP 3 say. They make that distinction and refer to a more liberal approach to housing in remote or rural areas. I think that that is clear.

On Mr Scott's point, I do not like the term "inconsistency". One man's inconsistency is another man's flexibility. In its new relationship with local authorities through the concordat, the Government has set out in general how it wants many of those issues to be addressed, but even within local authority areas, some of which—such as Highland—are the size of Belgium, different approaches are required in different areas. I do not see the approach as being inconsistent; I see it as being flexible and responsive to the circumstances in certain areas.

I can think of some rural communities where, given the nature of the settlement, you might be very restrictive and question whether you want it to expand at all. That may well be for reasons related to the built heritage or the natural heritage. Do you want small-plan towns that are jewels to expand? There is a question there and it is at least worth having a debate. I am not against such expansion and I think that the issue is how it is done rather than whether it is done.

John Scott: I will leave it at that.

The Convener: I will ask a more general question, about affordability. It is an issue that has been raised by a number of witnesses and there are different views on it; I would like to test your views. Should there be a separate affordable housing use class? Would that be beneficial or otherwise? Some witnesses have said that they would like to see it; others have said that they would not. It would be interesting to hear your views.

11:30

Jim MacKinnon: During the passage through Holyrood of the Planning (Scotland) Bill, now the Planning (Scotland) Act 2006, concerns were raised—very strongly, as I recall, by John Home Robertson in an East Lothian context—about the effects of the planning reforms on affordable housing. As a result, we commissioned research that was published in 2006 under the title "Allocation of Land for Affordable Housing Through the Planning System".

On the use class for affordable housing, the consultants who undertook the research made it very clear that there would be

"Difficulties of defining 'affordable housing' in a way that would be robust enough to withstand the tests of planning law"

and that there were "No clear advantages" over existing mechanisms for ensuring affordability in perpetuity. Moreover, as Veronica Burbridge pointed out, the research found that planning authorities were not well suited to enforcing affordability in perpetuity and that

"After ten years, residents could apply for a certificate of lawfulness"

to remove such a restriction. The potential for social segregation would be increased, as Mr Rumbles suggested, and planning consent would be required for right-to-buy sales or where the owner of an affordable house could not find a purchaser who met the requirements for occupation.

We found those arguments against introducing a social housing use class pretty persuasive. Furthermore, as well as trying to make planning more enabling, we want it to stand back from the detail of these matters, and such a move would require to be policed, monitored and enforced. I genuinely do not believe that any benefits are worth the enormous effort that would be required.

The Convener: The obvious difficulty is that, under the current system, not enough affordable housing is being built. Except for the point about social segregation, which I suspect Mike Rumbles wants to come back on, the arguments that you have just advanced also apply to the situation at the moment. The question, then, is how we make the current set-up work. If it is not working and if it is not appropriate to introduce a separate affordable use class, where does that leave us? What is the solution to that problem?

Jim MacKinnon: That is a wider issue that has more to do with housing policy than with the planning system. I suppose that my argument is that I do not think that the planning system is the key tool for delivering what you suggest.

The Convener: And that is notwithstanding the consensus of most of our witnesses that planning itself is a key obstacle.

Jim MacKinnon: I do not believe that. The planning system does certain things; whether or not it is an obstacle in this respect, the fact is that most of the issues surrounding affordable housing centre on the role of registered social landlords. I am very happy to talk about issues such as land supply and compulsory purchase, but, as I say, I do not necessarily believe that the planning system is a big obstacle.

I do not want to get into too much detail on this—partly because I do not have it at my fingertips—but I am aware of one very strong line that used to be taken; that planning continued the work of the Highland clearances. However, according to the statistics, about 98 or 99 per cent of planning applications for housing in rural areas are granted. The figure is very high in many parts of Scotland, including remote and island communities.

The Convener: And that figure is for affordable housing?

Jim MacKinnon: It is for applications for individual houses in the countryside. You will always have to rely on someone submitting applications for affordable housing and having the money to build these developments.

Mike Rumbles: I want to link the issue of affordable housing with land supply. Previously, when I heard that someone owned land in a housing zone I always thought, "Wow! They're going to make a lot of money," but many of the witnesses who have given evidence have said that the key issue is the lack of land supply. Some landowners want to hold on to their land for a long time as an investment—after all, it is, as it were, money in the bank—or simply do not want a development with 25, 35, 40, 50 or whatever per cent of affordable housing on their land.

Instead of taking the compulsory purchase route, could we remove the planning designation of an area if it has not been exercised within X years? If a landowner saw that he or she might lose their investment or the land's monetary worth through the removal of the designation, would that encourage them to build on the land designated for housing?

Jim MacKinnon: I have already mentioned the importance of statutory action plans. If land has been identified for housing and if the planning authority believes that it is important to deliver housing in that area, it should set about trying to make that happen. That might be done in partnership, but if such an approach fails, the authority might have to resort to harsher methods, such as compulsory purchase orders.

I am not entirely persuaded that we should just remove the allocation. There may be perfectly good reasons for nothing happening. It may well be that the landowner owns all the land in and around the village. I can think of parts of Scotland where that is the case. Although there are enormous amounts of land in rural Scotland, not all of it is suitable for housing. It may well be that there was a battle to get a particular site identified in a development plan. The other options might be less suitable for reasons of flooding, transport or water and drainage. If the planning authority firmly believes that it has the best site, it should try to secure that for implementation; but if it thought that there were alternative sites, it may well promote them. However, I do not think that that can be made a general rule. If we cannot make something happen, we should ask why we cannot and what the alternatives are.

Jamie Hepburn: Mike Rumbles launched into the area that I wanted to explore. Your statement begs a question: do you believe that the powers at local authorities' fingertips are substantial enough? If not, should they be given additional powers? Should there be a more streamlined compulsory

purchase order system to deal with landowners who refuse to release land?

Jim MacKinnon: When I went into the planning department many moons ago, in the west of Scotland, compulsory purchase orders were used a lot. That was particularly the case in urban authorities. When tenements were being demolished for redevelopment, we tended to find that, for example, the trustees of the late Mr and Mrs X were now in Adelaide in Australia or that the owners were unknown, so compulsory purchase was used quite a lot to secure redevelopment or regeneration objectives. That practice has largely fallen by the wayside. There is also a traditional reluctance in rural Scotland to use compulsory purchase powers—that is not really how it is done.

Jamie Hepburn: Why?

Jim MacKinnon: I do not know; it is just how things have traditionally worked in rural Scotland. I cannot remember lots of use of compulsory purchase orders in rural Scotland, although I think that Highland Council proposes to acquire the Nigg site if it cannot get the developer to the table. There has been a reluctance to use CPOs over the years, so there might not be the necessary expertise or political will in local authorities to do it. To be fair, the legislation on compulsory purchase is antiquated, complicated and difficult to use. It would be a huge task to reform it. That is something for the Scottish Law Commission. It comes across the stage from time to time.

The Convener: Can I just say, as the only member of the committee who has tried to progress a compulsory purchase order in a local authority's legal department, that the current system would not be fit for purpose. I cannot envisage how using a CPO when a known owner is a reluctant seller could be manageable. That is probably one reason why the easy stuff has already been done in urban areas.

Jim MacKinnon: That is right, but the powers exist, although there has to be the determination to use them. I am not pretending that having expertise makes them easy to use—they are difficult to use. Reforming that would be a long-term process, but perhaps something could be done about giving advice on best practice. My first boss in a local authority used to talk about the electric shock treatment in this context, because the prospect of a compulsory purchase order might make people think about what was most appropriate for their area.

Jamie Hepburn: I want to tease that out slightly. Effectively, you are saying that the legislation, or the process, for compulsory purchase is antiquated and could do with revision.

Jim MacKinnon: I think that there is widespread agreement that that is the case. With all due

respect, the old adage that a camel is a horse designed by a committee applies here. The process has just kind of grown over the years, and various amendments have been made to it that I do not think are codified. Compensation is a difficult issue as well; it is not just about the mechanical process of acquiring the land. Not only is the legislation difficult; in many areas there is a lack of political will to use CPOs and probably a lack of expertise to do it as well. There is a combination of factors.

Karen Gillon: You seemed to find a way to do it for the M74 extension, so why is it so difficult to do it for affordable housing?

Jim MacKinnon: Actually, I did not say that it was difficult. What I was going to say was that there has been a lack of use of compulsory purchase in many rural local authorities. The M74 extension had been planned for a considerable time. The one area of expertise on compulsory purchase is probably in our roads department, which has developed a lot of expertise over the years, in schemes throughout Scotland. The department has a significant body of expertise in progressing highways schemes.

Karen Gillon: I think you did say that it was difficult to do.

Jim MacKinnon: Yes, I did.

Karen Gillon: Rather than embarking on reform of compulsory purchase orders, perhaps it would be better if we used the expertise that exists in our roads departments, our housing departments and the sectors of the Scottish Government that deal with affordable housing. Is such an information-sharing exercise going on? If not, what role do you have in advising ministers to start moving that forward?

Jim MacKinnon: There are two issues. First, I have already made the point that development plans are a means to an end and not an end in themselves. If we are looking to do something, we need to ask how we can progress it and what the priorities are. We then need to ensure that different council departments, in some cases the Government, and the statutory agencies are aligned to deliver the particular project or policy.

Secondly, a lack of specialist skills has arisen in planning reform. Not all local authorities can afford to hire people with expertise in certain areas. We are considering whether a central resource could be created, into which local authorities could tap. That might help people. There is a difficulty for ministers. I am not a lawyer, but, as I understand it, we are the confirming authority for compulsory purchase powers, so we need to think about how that might be done. However, there is potential to marshal the expertise that exists without compromising the position of ministers.

We need to ask how we can create some sort of guide or aide-mémoire to help people through the process, particularly if they are not used to it.

John Scott: Do you have a view—or are you allowed one, possibly—on how housing allocation policy is impacting on affordable housing in rural or urban areas? Is the balance right in terms of homeless allocations?

Jim MacKinnon: I know nothing about that. Louise Feenie might have a view, but I—

The Convener: It is not within your remit.

Jim MacKinnon: No. I do not mean to be silo based, but that is not something on which I have any knowledge or could express a view with any authority.

John Scott: Okay.

What evidence exists that planning advice note 74 is improving the deliverability of affordable housing in rural areas? How will section 75 agreements enhance that, and are there any inconsistencies in their application?

Jim MacKinnon: There are inconsistencies. Homes for Scotland did a survey and found that some councils do not have policies, that some have general policies, and that some have developed specific policies. Again, that just reflects the diversity of circumstances in rural Scotland.

Planning advice note 74 took us into new territory, so I was keen to monitor its impact. It was published only in 2005, but we have done and published some research that shows its impact. It is beginning to have an effect, but we are monitoring the number of units that could be delivered through section 75 agreements rather than the number of units that have actually been built. We will consider the latter next time round.

I cannot give precise figures, but I recall that in Edinburgh, a couple of years ago, about 4,000 units were sitting with consent for affordable housing through section 75s, but only about four had been built. The policy is beginning to have an impact in relation to units that could be delivered through the mechanism of the quota system, but whether they are actually being delivered is another issue. We need to consider that and see whether we can get a feel for it. We are keen to consider whether units are being delivered largely in urban Scotland or in rural Scotland. However, the policy is only two or three years old.

The Convener: Does Louise Feenie have any comment to make in response to John Scott's questions?

Louise Feenie (Scottish Government Housing and Regeneration Directorate): Sure. I focus on housing supply and the right-to-buy

policy, so I am by no means an expert on allocations policy. However, the themes that arose at your conference in Aviemore included community engagement and local people's willingness to see, for example, new developments of social rented housing in smaller communities. There is a view—it is a perception more than anything else—that allocations are made on a particular basis, for example to homeless people, or to people whom others do not want living right next door to them.

The Convener: Perhaps the issue ought to be put more expressly, as being about people from outwith the area. Affordable rural housing will, we hope, be provided for people from within the community. Can we add that as a category, because otherwise we may misrepresent some of those communities' concerns?

11:45

Louise Feenie: Sure. Local authorities are responsible for setting their allocations policies, which should be fit for purpose for local areas. Issues arise about the allocations that are being made by local authorities and, in particular, registered social landlords. For example, an issue arises about the level of homeless people who can access social housing in rural communities.

John Scott: We know that there are issues—tell us something we do not know.

The Convener: It is clear that neither of the witnesses can follow through on the commuted sums, because once those sums are paid over, it is for the council to decide what to do with them. Councils do different things—some may choose to pay for council houses with the money. Is it a fair comment to say that neither of you is in a position to follow through on that?

Jim MacKinnon: That is a fair comment. I should say that the Planning etc (Scotland) Act 2006 introduced powers whereby local authorities can be required to set up a register of how they use moneys that are gained through section 75 and other agreements. We will commence those provisions in due course. It was felt that there is a lack of transparency about what happens to those sums that go into local authority coffers. At present, we do not have that information, but I hope that we will have it in due course.

The Convener: Does the abolition of ring fencing in local authorities apply to those commuted sums?

Jim MacKinnon: I do not think that it does. The commuted sum is an agreement with the developer. We recently published research on the value of planning agreements in Scotland. Much of the money relates not to affordable housing, but to

contributions to infrastructure for major development schemes. However, we can make the research report available to the committee if that would be helpful.

The Convener: That would be useful—thank you.

Peter Peacock: I have a question about something that is troubling me slightly. The convener asked about the evidence that we have had that planning is an obstacle to housing development in a variety of ways. Jim MacKinnon's response seemed to be that that is not his position. Having worked with him in government, I know that he is someone who tries to get things done. However, there seems to be a big disjunction between his position and the practical reality throughout Scotland that we have heard about in evidence. How can we ensure that, in six months or a year, much more of the planning system has the disposition that he has about getting things sorted, that nothing is impossible and that where there is a will there is a way? At present, that is not the case at all. Are you confident that we can make that journey? We are asking the planning system to undertake a big cultural shift.

Jim MacKinnon: It is a significant cultural shift, but we must be careful. In the past in Ireland, about 90,000 houses were built every year, although there have not been so many recently. About a third of those were individual houses in the countryside. When people go to Ireland they think, "This is terrible—the countryside is just a rash of bungalows."

The Convener: Oh—what makes you assume that that is the attitude of people who go to Ireland?

Jim MacKinnon: I was going to say that many people assume that I am talking about building anywhere and everywhere. I am saying that we can have a structured approach that allows more development in the countryside, subject to clear indications of the standards that are required on siting and design. I believe firmly that that is achievable, but it will require close working between local politicians and officials. In some parts of Scotland, there are issues about recommendations for housing in the country being overturned. It is possible to align the political aspiration for more development and a thriving rural society and the desire to maintain the quality of the Scottish countryside. Those objectives are not incompatible.

Peter Peacock: I want to press you further on that. You touched on design, as did a previous witness. Is your concept about the greater liberalisation of the process inextricably caught up with the quality of design? On the Black Isle, which

is a big rural area under huge pressure for housing, there are loads of three-bedroom standard bungalows in corners of fields—many people take great exception to them, although I do not. If they were not just bog-standard, three-bedroom designs in the corners of fields, but were of a higher design quality and involved new environmental approaches to building, would that make a big difference?

Jim MacKinnon: This is not just about putting bungalows in the corners of fields. As we have gone round Scotland consulting on the national planning framework, growing concern has emerged about the protection of high-quality agricultural land. There are lots of places in which we can site houses, often in quite prominent positions, where those houses would add to the landscape. The first issue is location and the next is design. It is important for Scotland that design reflects a sense of place. That does not mean that we should not allow new, innovative designs. I do not really have a problem with design that responds to the challenges of sustainable construction, climate change and water. That would be my approach in many parts of Scotland. In some parts of Scotland, I would expect to see a restrictive approach, because of the issue of sustainable transport.

Mike Rumbles: I want to pursue that point with a question that I asked the previous witness. Let us put to one side the issue of where we build houses, although we have to decide on that. Outside the conservation area, where people want to conserve the traditional environment in which they live, why should the planners—who appear to have a very conservative approach, which is lacking innovation and liberalisation—get heavily involved in decisions? Why should they be able to say to people, “Actually, you can’t build that type of house here because we don’t like it”? The system should be able to tell people where they can build houses but, outside special areas of conservation, why should somebody else decide what style is appropriate?

Jim MacKinnon: If you go to the Swiss Alps, you see chalet-type developments. People think that those are appropriate and that they add to the character and quality of the area. When people go to rural Scotland, they want to see housing designs that are Scottish, for want of a better term, although I appreciate that there are significant regional variations in Scotland. My view is simple: if we can encourage a more liberal approach, and indicate suitable locations and the standards of development and new design—

Mike Rumbles: I want to pick you up on something that you just said. You talked about what people expect to see when they visit an area.

I am talking about people who live and work in our rural communities.

Jim MacKinnon: Absolutely, but there are issues about people who have certain aspirations that may be difficult to fulfil. There is the issue of rising fuel prices. Peter Peacock talked about the number of people living on the Black Isle. That may become less easy to do in the future, because of the cost not just of commuting but of heating houses using large oil tanks. There is a wider issue there. We talked about the need to see things in the round, which is important. However, the point that I really wanted to make about design was that it should not be down to the subjective taste of individual planners. Instead, we should be saying, in supplementary guidance, “These are the standards of development that we are after. There are different ways that you can do it, but if you meet those criteria, that’s fine.”

Recently we had an important seminar with the First Minister and Prince Charles, at which the keynote speaker was Andrés Duany, one of the leading urban designers. He made the point that in Scotland, we rely very much on guidance rather than standards. Rather than interfering with detailed issues such as roof pitches and fenestration, the standards should be set out clearly at the outset to signal that people can go ahead.

Mike Rumbles: I am delighted to hear that.

The Convener: No one has any further questions, so I thank both of you for coming along. I know that you will be watching what we are up to. We have a way to go on this inquiry yet.

Jim MacKinnon: Thank you, convener. We will send you the research. If the committee has any further questions, you should just get in touch.

The Convener: Thank you—we will do that.

Work Programme

11:54

The Convener: Agenda item 5 is a discussion of the committee's forward work programme. The committee held an away day last Tuesday, following which the clerk has produced a note, which has been circulated. There are four key areas on which the committee must make decisions. The first two involve issues that would form the basis of inquiries; they are whether to hold, in the early autumn, a round-table discussion on food policy, and whether to invite the Auditor General for Scotland to give evidence on his report on sustainable waste management. The third area is whether we should reconsider our previous decision to conduct an inquiry into agricultural regulation and support, and the fourth area is to discuss making a visit to Brussels to meet key stakeholders at European level—I should say that that would not be likely to happen until next spring.

I am conscious that Mike Rumbles was unable to be at the away day. Do you want to make any comments on those four areas, Mike?

Mike Rumbles: I am disappointed to hear that fellow members of the committee have suggested that we do not need to conduct the inquiry into agricultural regulation, which we had agreed to conduct. More than £400 million of European money is spent in that regard in Scotland every year, and I think that we should have a better handle on that. The visit to Brussels would go hand in glove with that inquiry. I cannot understand why we would go to Brussels if we dropped our inquiry into agricultural regulation.

The Convener: In fairness, the decision about agricultural regulation and support was guided by the discussion that we had at the away day, and involves a deferral rather than an abandonment of the inquiry. We were not linking the inquiry to the Brussels meeting; we were thinking about the relationship that the committee has to the amount of stuff that comes from the European Union, from the point of view that we should have a better understanding of how to input to European work at a much earlier stage. This committee, like other committees, struggles massively with that issue.

Peter Peacock: The paper captures our discussions very well, and I agree with the priorities that are being recommended. That said, it is not possible for the paper to cover everything that was discussed. In that regard, it is important to note, in approving the paper, that we were not able to accommodate other issues, such as the need to review the land reform legislation, which remains on the agenda, and sea angling. We also

need to examine the rural development programme—which connects to what Mike Rumbles was saying—once it has had time to bed in. That programme is a huge part of Government activity in this area.

The programme that the paper outlines is already demanding. It cannot accommodate the three issues that I have mentioned, but, as it covers other important issues, I support its recommendations.

The Convener: At the away day, there was a general feeling that, if the committee did not address issues relating to food security, that would be a fairly big failure on our part. It was felt that, at the moment, the issue was a more pressing concern than it was thought to be when we discussed our work programme last summer. That is evidence of the speed with which the environment is changing in respect of food security.

Mike Rumbles: I respect the views of other members of the committee. However, if the inquiry has been postponed, rather than abandoned, it would make sense to tie the European visit into an inquiry into that area—whenever we come to it—because of all the issues that come out of Europe in the area of agricultural regulation.

The Convener: The Brussels visit that is proposed in the paper is slightly wider than that. There is nothing to prevent us from going to Brussels again in the context of a future inquiry. We did not see the visit as necessarily being a one-off.

Mike Rumbles: But, since we have not been there yet, we are unlikely to get another bite of the cherry.

The Convener: I do not think that that is necessarily the case.

Karen Gillon: I am generally content with the paper. However, as I was not able to attend the away day in the summer, I am slightly confused about what the agricultural regulation inquiry was going to be concerned with anyway. The subject is exceptionally broad, and I am not clear about what the inquiry was going to examine.

Through the budget process, we will have to look at the operation of the rural development programme in the past year—certain issues around efficiency savings and modulation have arisen that I want to explore further at that time.

One of the things that we flagged up around the visit to Brussels was our need to be aware of and be involved at a much earlier stage in European decisions on regulation and policy, so that we can influence regulations before they come into force. I think that the visit to Brussels will tie in with some of those issues around agricultural regulation.

However, as Mike Rumbles rightly points out, there are so many agricultural regulations that it would be necessary to pick some specific issue to examine, rather than simply having a broad inquiry into agricultural regulation.

12:00

The Convener: Another important issue is the introduction of the one-stop shop idea. It might be useful to examine that in a year's time, to see whether it is working properly.

Karen Gillon: Yes.

I agree that it would be a dereliction of duty if we were not to consider food security, given the prominence that the issue now has in Scotland and around the world. Part of this committee's role should be to consider how we will mitigate the problems and adapt to the challenges.

John Scott: I agree with virtually everything that Karen Gillon has said. The paper is very good, and correctly captures the spirit of the away day.

On Mike Rumbles's point, we had been thinking of looking at the regulations governing the Scottish Agricultural Wages Board and the part that the board plays in rural Scotland. However, the Cabinet Secretary for Rural Affairs and the Environment launched a welcome consultation on the issue last week, which would seem to address that point.

At the away day, the feeling of the committee was that our ability to influence agricultural regulation was possibly less than our ability to influence the food security debate and Government thinking about how Scotland might address those issues and play our part globally. In terms of the committee's ability to achieve something, it is vital that we consider the food security issues.

The Convener: Does the committee agree to reconsider our previous decision to conduct an inquiry into agricultural regulation and support at this point in the committee's proceedings?

Members indicated agreement.

The Convener: Do we agree to hold a round-table evidence session to discuss food policy during the early part of the autumn? The aim of the session would be to help us to scope out an inquiry. In asking for that agreement, I also ask the committee to agree to delegate authority to me to finalise the list of participants. In doing so, I will have regard to the names that were mentioned at the away day and further suggestions from members.

Members indicated agreement.

The Convener: Do we agree to invite the Auditor General to give evidence to the committee

in the autumn on the 2007 Audit Scotland report on sustainable waste management? The report has been out for a while, but that discussion would help our consideration of whether to conduct an inquiry into waste management. Do I have that agreement?

Members indicated agreement.

The Convener: Do we agree to visit Brussels to meet key stakeholders at a European level? The visit would take place after the European Parliament had risen but before the European election campaign, as there would be a minimum amount of distractions in that window of opportunity.

Mike Rumbles: What is the purpose of the visit?

The Convener: The purpose of the visit is to connect directly to those commissioners who have responsibility for the areas that our remit covers, and to explore with them, among other things, ways in which this committee could make a much earlier and more direct input into the process than it can at the moment, so that our contribution can be more effective. I do not think that any Scottish Parliament committee has yet managed to get on top of that issue, and we would like to ensure that this committee examines the way in which it works with regard to Europe.

John Scott: We would also like to get an understanding of the current thinking in Europe on the direction of travel in the period after 2013, in terms of agricultural relations—

Mike Rumbles: And regulations.

John Scott: Indeed. However, we have the regulations that we have. We need to start looking at—and trying to influence—what we will have after 2013. That is why the committee should be connecting with officials in Europe and with commissioners.

Mike Rumbles: It seems to be a wasted opportunity.

The Convener: Do we agree to the suggestion?

Mike Rumbles: No.

The Convener: We will need to take a vote. Do we agree to seek approval for a fact-finding visit to Brussels?

FOR

Cunningham, Roseanna (Perth) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Hepburn, Jamie (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)
Wilson, Bill (West of Scotland) (SNP)

AGAINST

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

12:06

Meeting continued in private until 12:21.

The committee agrees to plan its visit to Brussels.

That ends the public part of our meeting. Our next meeting will take place on Tuesday 2 September, in the Corn Exchange in Melrose.

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