TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 1 December 1999
(*Morning*)

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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CONTENTS

Wednesday 1 December 1999

TRANSPORT AND THE ENVIRONMENT COMMITTEE
8th Meeting

CONVENER:

*Mr Andy Kerr (East Kilbride) (Lab)

COMMITTEE MEMBERS:

*Helen Eadie (Dunfermline East) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Robin Harper (Lothians) (Green)
Janis Hughes (Glasgow Rutherglen) (Lab)
*Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)
*Mr Kenny MacAskill (Lothians) (SNP)
*Des McNulty (Clydebank and Milngavie) (Lab)
*Nora Radcliffe (Gordon) LD)
*Tavish Scott (Shetland) (LD)
*Mr Murray Tosh (South of Scotland) (Con)

*attended

WITNESSES:

David Banford (Dumfries and Galloway Council)
Mary Dinsdale (Convention of Scottish Local Authorities)
Councillor David Hamilton (Convention of Scottish Local Authorities)
Alan Henderson (City of Edinburgh Council)
Bill Hepburn (Convention of Scottish Local Authorities/Highland Council)
Brian Kelly (Glasgow City Council)

COMMITTEE CLERK:

Lynn Tullis

ASSISTANT CLERK:

David McGill

Scottish Parliament

Transport and the Environment Committee

Wednesday 1 December 1999

(*Morning*)

[THE CONVENER *opened the public meeting at 09:35*]

The Convener (Mr Andy Kerr): I welcome everybody to the eighth meeting of the Transport and the Environment Committee. My name is Andy Kerr, and I am the chair of the committee. We have, around the chamber, a variety of MSPs whose names, I hope, are visible to the witnesses. We will try to keep the committee meeting as informal as possible, and I warmly welcome the witnesses, any members of the press and the public. This is the first time that this committee has met in the parliamentary chamber. We will see how we find it.

Telecommunications

The Convener: As the witnesses will be aware, we are conducting an inquiry into telecoms developments. As part of that, we have requested witnesses from a local government field. I welcome Councillor David Hamilton, Mary Dinsdale and Bill Hepburn, who are representing COSLA, the Convention of Scottish Local Authorities. We also have a panel from individual local authorities: Brian Kelly of Glasgow City Council, Alan Henderson of the City of Edinburgh Council and David Banford of Dumfries and Galloway Council. Bill Hepburn is also representing Highland Council.

If everybody is happy, we will proceed to the first area of questioning, for COSLA, regarding parts of its submission. I invite its representatives first to make any additional comment they may have over the next few minutes. It is up to yourselves.

Councillor David Hamilton (Convention of Scottish Local Authorities): Thank you, convener. I do not know if it is just me, but I do not have my glasses on and I can barely see you, let alone read MSPs' name plates.

I am convener of the development services forum, Mary Dinsdale is a policy officer and Bill Hepburn is the principal for development control for Highland Council, although he will be wearing his COSLA hat for the first part of the proceedings.

We welcome the opportunity to provide further evidence to this committee on telecommunications development. COSLA held a seminar last week, which some members attended. That seminar covered the statutory framework of the installation of telecommunications masts, operation perspectives, how the cell sites work, related health and safety issues, the existing national guidelines, the case for a precautionary approach to cellphone technology and the councils' response to that.

COSLA represents 32 local authorities, including those of the Highlands and Islands. It is a voluntary organisation, and is paid for by membership subscription. Every single council in Scotland is involved in COSLA. Several committees make up COSLA, and the 32 local authorities are represented on the major committees and task groups. In addition, there are various sub-committees which specialise according to what part of the country their members come from. For example, a number of councillors from the north of Scotland and some parts of the central belt take a specific interest in national parks. However, every single council is represented on the development services forum, which covers economic development, transportation and planning.

We are involved in a substantial number of matters, and the debates that we have been having recently cover a number of issues that we believe must be addressed differently from what has hitherto been makeshift. At present, COSLA believes that there should be full planning control for telecommunications development. In the most recent survey of councils, 23 out of 30 responses indicated full planning control over the prior approval system.

The procedures for full planning permission are easy to understand, and are used by everybody: the private sector, public bodies and members of the public. The precautionary approach has been adopted—50 per cent of councils have responded, and a number of them have been monitoring emission levels. That shows a clear need for guidance, to help councils assess health issues, which can be considered in the material consideration of the planning process.

As a layman, it came home to me last week that the third generation licence coming into operation will potentially increase the number of masts threefold. That causes me some concern. In our opinion, it would be a reverse position to take, so we need clear guidance on this issue as soon as possible.

I believe that the committee is taking evidence in two sessions. We will answer the overall questions. As I am a politician—as members will be aware, that is a jack of all trades and master of none—I have tried to ensure that within the panel we have people who will be able to respond to the

concerns that the committee and local government have.

The Convener: Thank you, David. I was impressed with the seminar that COSLA held last week, which some committee members managed to attend. That was useful and well timed by COSLA in relation to the work that is going on elsewhere. You have obviously done a lot of work on this issue. Has COSLA issued formal advice to planning authorities with regard to telecoms?

Mary Dinsdale (Convention of Scottish Local Authorities): There has not been any advice issued yet, because we were considering the consultation that had taken place and we were waiting for the outcome of the seminar. We will issue some advice in due course.

The Convener: Have you formed a view on the siting of masts on local authority-owned property? What approach has your membership taken on that issue?

Councillor Hamilton: The position, because of how this has developed, is that each authority has taken on its own remit. That is why we are attempting to get some cohesion. We put a questionnaire out some time ago. The final results indicate that 23 local authorities prefer full planning permission. A number of authorities are currently working with sites on their properties. A number of those authorities have now reviewed their position. That will come through in the responses to members' questions.

The vast majority of local authorities have now taken a view that they will not put masts on their own sites, unless they go through certain lines. Members will be aware that masts under 15 m do not require planning permission—that is 45 ft in the old imperial system. While 15 m does not sound so bad, 45 ft is quite a height. The approach varies from authority to authority, but we are beginning to pull together. A consensus view is developing that something must be done. If that means a change in the future for those authorities that are building on their own property, so be it.

Mr Kenny MacAskill (Lothians) (SNP): I think that you covered this in your preamble, but perhaps you could confirm, for the record, what the problems and deficiencies are in the existing system.

Bill Hepburn (Convention of Scottish Local Authorities): The existing system is twofold. Operators operate under their licence from the Telecommunications Act 1984, so each operator has his own individual licence. Planning controls relate to whether there is a need for planning permission and whether it comes within class 67 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1997. Class 67 has been widely drawn. It gives operators a lot of opportunity to erect structures, as Councillor Hamilton said, up to 15 m in height, with associated base equipment and without planning permission.

I noticed an anomaly in some of the evidence given by the operators to the committee. Vodafone said that planning authorities could take enforcement action against operators that did not construct their apparatus in accordance with their licence. I think it is strange that planning authorities have to read an operator's licence and decide whether they can take action against them outwith planning legislation.

As you can judge by the evidence given to the committee, it is common ground among the Scottish Executive and others—and is accepted by the operators—that the present system is inadequate and must be changed. There are inconsistencies and difficulties in interpretation. Permitted development is too wide.

Mr MacAskill: The two options are prior approval and full planning control. We already know that you support full planning control. Why is that? What is lacking with prior approval?

Bill Hepburn: There are different reasons for that. As far as I can gather, prior approval will be a two-tier system. Where there is a 42-day notification period, it will involve almost the same amount of administration as it would take to deal with a planning application: the application will have to be registered, its competency will have to be checked, consultation will have to be undertaken, the application will have to be advertised, a site visit will be required, and all of that will be required to be assimilated, perhaps in a committee report, before a decision can be reached. That is almost no different from the procedure for a planning application.

There are differences that give rise to concern. First, prior approval does not require neighbour notification. There is a quasi-assumption that a prior approval will get consent anyway if everything is in accordance with the guidance, whatever that is. Secondly, there is no planning fee, which reflects the amount of work that may need to be done.

As a practising planner, I find it difficult to see that prior approval offers any real-time advantage for operators. One of the difficulties, however, is that if a prior approval is not dealt with within 42 days, there will be a deemed approval, which potentially puts quite a lot of pressure on planning authorities. For permitted development, it also introduces the strange concept of having to give more priority to prior approval than to planning applications, for which people have paid a full fee and are going through the system. That goes for everyone in the planning system, from industrial

developers to householders. It is difficult for the public to comprehend why there should be a difference.

09:45

Councillor Hamilton: It is also difficult for a number of people in industry. I have already received a delegation of members from Midlothian chamber of commerce. One or two employers have asked why they have to go through a certain process when other organisations do not. In my surgery, people have asked why they have not been notified about masts that have been erected in my area. If I want to hang a new door or extend my house, I have to do certain things, yet I could wake up one morning with a mast at the back of my house and would not be able to say anything about it. Practical problems arise from not having a system that applies throughout.

Mr MacAskill: My next two points are related. First, is the current system flexible enough or is it lacking? It is all very well for Midlothian to do one thing, but should there be a national plan rather than individual local authority systems?

Secondly, I understand that COSLA has a working group. What direction is it heading in? What view does it take of an overall national policy? What are the practical aspects?

Bill Hepburn: I can comment on your first point. A series of national guidelines, called national planning policy guidelines—or NPPGs—exist for other aspects of planning, such as retailing, alternative energy, industry and so on. I see no reason why there cannot be national guidance on how planning authorities should deal with telecommunications, which is a large, dynamic and expanding industry. Part of the council's case is that there should be better guidance on good practice and policy.

I cannot comment on the COSLA working group.

Mary Dinsdale: The task group produced a policy paper last year, which I can make available to the committee. Generally, we were in favour of national guidance, but the detail of a national plan will be examined further in the future.

Mr Murray Tosh (South of Scotland) (Con): I want to follow up Bill Hepburn's point about the similarities and differences between prior approval and full planning. As far as you understand prior approval procedures, could the time period within which a decision has to be taken be extended if an environmental impact assessment were required, which would take one beyond 42 days? Could the planning authority extend the period if it judged that the applicant, by failing to provide information or sufficient documentation, had made it impossible to determine the application? For example, one could imagine that an applicant might not give information to the authority's satisfaction in a roads construction consent case. That might lead to the process being protracted. Can you extend the 42-day period or would you lose simply because the time frame locked you out? Is there an incentive for the applicant to spin matters out as long as possible?

Bill Hepburn: The question of whether the period could be extended is one for the Scottish Executive, which drafts the regulations. I understand from the evidence of John Gunstone about his discussions with COSLA last week that the answer is no. The period is set at 42 days, or 28 days for installations on buildings or other smaller-scale installations.

We operate an informal system in the Highlands in which we undertake consultations on a 28-day notification. Frequently, we cannot respond in that time, for a range of factors. In practice, the operators are reluctant to jump in and accept permitted development. There may be a de facto opportunity to extend the period, but probably not in terms of the regulations. That creates an uncertainty which is unhelpful to both sides of any argument.

If one seeks to extend the period, the procedure will become so close to being a planning application as will make no difference. The planning application system does not impose a deadline in quite the same way: one cannot take a deemed approval at the end of a two-month period, but one can take a deemed refusal. In practice, if there are difficulties with a planning application, one can negotiate with the developer and seek compromises that may be acceptable. If the developer does not like that, he has a pathway to a decision, as he can appeal against it.

In those circumstances, I see very little advantage to having a prior notification rather than a full planning application. Planning applications have the advantage of allowing more flexibility in the system. I doubt in practice that there will be significant delays other than there might be in any case with contentious prior notification procedures.

Nora Radcliffe (Gordon) (LD): Can you clarify what the time constraints are on a full planning application? You said that if one overruns a full planning application, there is a deemed refusal. Is that the case?

Bill Hepburn: It is more accurate to say that the developer can accept a deemed refusal, but can appeal against the non-determination of a planning application. However, the onus is on him to do that, if he feels that there is an opportunity for negotiating, compromising and seeking to allay the concerns of the authority or the public. We can then proceed to determine that proposal. That

might take two weeks, a month, two months, or longer, but at least a decision is reached, possibly a lot quicker than could be done for a contested prior notification.

Nora Radcliffe: What is the time frame for a full planning application?

Bill Hepburn: A full planning application usually takes two months. If an environmental assessment is required, it will take four months. It is unlikely that any telecommunications development would require a formal environmental assessment under the environmental assessment regulations.

The Convener: I will approach that subject from a slightly different angle. What percentage of planning applications are determined within two months?

Bill Hepburn: The figure is approaching 80 per cent for householder applications in the Highlands. We have specific government targets. A comfortable majority of planning applications are determined in the two-month period. If they are not, there are usually good reasons: they are contentious or there are problems.

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): You mentioned the work that COSLA has done and the fact that a consensus is emerging. How many local authorities believe that we need full planning control and how many favour the prior approval process?

Mary Dinsdale: Of the 30 that responded, 23 councils indicated that they would prefer full planning control, four indicated that they would not and two indicated that they would prefer either prior approval or some form of increased control.

Cathy Jamieson: I want to examine sensitive areas and the precautionary approach. In the latest deliberations, did COSLA decide that sensitive areas should be introduced into the planning framework for telecommunication developments and, if so, why did it decide that?

Councillor Hamilton: We have not come to any conclusion. Part of the process, as you will know from the conference last week, is to come here and answer questions. The other part is that we will discuss and analyse the latest results. We consulted local authorities so that we could get the maximum amount of information for today's meeting. We will come to a conclusion soon. We can respond to your question in writing once we have done so.

Bill Hepburn: In the planning process, there are difficulties in dealing with sensitive areas. Normally, the orthodox way of considering them is as a physical boundary, but I suspect that you are referring to health issues. One of the difficulties of drawing a boundary is that it is an artificial thing to do. A mast sited immediately beside a sensitive boundary could be as problematic as one sited just inside it.

We can define in guidance what sensitivities might be, but it is difficult to draw hard-and-fast boundaries across a range of factors. In the Highlands, there are landscape sensitivities about masts rather than health concerns. Some areas are designated as national scenic areas, but other vast and precious areas are not. I am not convinced of the value of drawing hard physical boundaries around sensitive areas. Sensitivities are hard to define and the situation will be trickier if we include health issues.

Cathy Jamieson: In your submission, you said that any attempt to define sensitive areas in which the height of masts would be restricted would mean that the operators would simply have to have a greater number of masts to provide the coverage. Should issues other than the height of masts be taken into account when we consider sensitive areas? Do most local authorities have an opinion on that?

Councillor Hamilton: Yes. One of the issues that came up at last week's conference was the type of masts that are being developed and how they work. Rather unfairly, I think, one of the companies that was there was asked a number of direct questions on the matter. The question of why there is no multi-use of masts was asked a lot. Because of competition between the companies, there are many masts in small areas where one would have done.

We saw drawings and diagrams of how masts might change. One mast was on a tree. Things are changing rapidly, but the fundamental issue is that there is no agreement between the companies to utilise effectively the resources that they have. There is a concern that the number of masts will increase. There are 2,000 masts in Scotland and 20 more are erected every month. If phase 3 comes in, the number of masts will increase substantially. Unless we can achieve some sort of cohesion across the country, we are in for a difficult time.

10:00

The Convener: You use the word height in your submission. Are your authorities giving you feedback on other areas that you might want to include under the heading of sensitive? If there is no information, that is fine.

Mary Dinsdale: I can look through the submissions again and provide further information if some is available.

Tavish Scott (Shetland) (LD): We will probably come to it later, but Bill Hepburn mentioned national scenic areas. Can you conceive of

circumstances in which COSLA's policy position would be that there should be no siting of masts in sites of special scientific interest or any other nature conservation designations and you would therefore press the Scottish Executive to give the same advice?

Bill Hepburn: That would be most unlikely. The difficulty with sensitivity is that it tends to be focused on one particular aspect of one particular site. If the site is in an urban area where there is a collection of fine buildings, the issue might be one of conservation. If it is a rural area, it could be a landscape issue, an SSSI, or closeness to rural housing. It is unlikely that there would be much objection to the siting of masts in many SSSIs in the Highlands, because the impact on the nature conservation interest might be relatively slight. There might be huge landscape or other issues, but that is variable.

The issue cannot easily be tackled just by designating sensitive areas here and there; contentious things will always happen outside sensitive areas. Things are easier to control, however, if a planning application is required for all major telecommunications apparatus. In the determination of that application, sensitivity can be taken into account as a material consideration in a number of ways.

Mr MacAskill: I would like to pursue those points. First, if we were to view health as a material consideration, are there any particular groups of individuals that we should classify for some form of additional protection within whatever regulatory system is brought in?

Bill Hepburn: My council has an interim precautionary policy, pending further advice. It seeks to prevent apparatus being sited on schools or sensitive residential accommodation: people's homes, social work homes or whatever. It is a difficult issue for planning authorities and requires an overview by Government, fitting the real problem into a reasonable, scientific evidential context and deciding which, if any, precautionary distances or factors should be taken into account.

The perception of health effects is a material planning consideration, but the weight that you can give that must rely on rational evidence. At this stage, on the face of it, there is not—and there may never be—a good body of conclusive evidence. In these circumstances, it will be difficult for planning authorities to deal with health issues, whether through a prior notification or a planning application procedure.

Mr MacAskill: I am assuming that, to some extent, what you are saying is that it is about facts and circumstances. Is that a fair comment?

Bill Hepburn: I think that it is, but, for the sake of argument, if you were to refuse an application on health grounds, it would have to be an obvious, almost extreme, circumstance that could be backed up by evidence.

Mr MacAskill: My next point relates to what you said earlier about environment and landscape. We could take the view that some geographic or topographical areas should have some form of criteria for protection. Do you think that that should be the case? If so, what would be the definition and what would be the level of treatment within the policy planning system?

Bill Hepburn: That is quite a big question, which refers not just to telecommunications. We already have a system of landscape environmental designations—national scenic areas, sites of special scientific interest and so on—which are for different things.

The argument could be made that any further controls could be helpful. My view is that it is not that simple in practice. A non-designated area on the edge of a town can be much more sensitive than a site within a national scenic area, because of its particular circumstances. It would not be an easy way forward simply to designate sites all over the place—for example, using article 4 directions, which the planning authority is empowered to do. Those directions have their own problems, because operators can feasibly seek compensation for development that would otherwise have been permitted. It is a clumsy, piecemeal approach. It would be better to go back to first principles and ask which developments deserve planning permission and then feed in one's sensitivities, based on the merits of the site.

The Convener: I am not quite sure about the balance. You talked about health being a consideration but not as something that might determine a decision. I am not sure where that fits with the balance of material matters and environmental sensitivity that you were talking about.

Bill Hepburn: The planning system is designed to deal with orthodox environmental concerns and material matters: siting design, external appearance and impact on amenity—for the most part, it is a visual and physical thing. Health concerns arise quite frequently in relation to waste tips, emissions from incinerators and so on. Case law has accepted that public perception of a health concern can be a material consideration. In some cases, a very acute perception would influence the planning authority in taking a decision or locating a development.

The difficulty with telecommunications apparatus is that the health effects are ill defined, if at all. It will be some years before that research is conclusive, if ever. At the moment, there is no evidence that would allow the planning authority to

base a refusal on health grounds. Telecommunications apparatus is ubiquitous. Preventing the siting of apparatus at a school, for example, may not prevent health effects were the apparatus to be sited across the road, where we might have no control. Furthermore, the industry would argue that there might be no health effect, or that there might be less of an effect, if the apparatus were sited on the building rather than across the road.

It is difficult to deal with that in the planning process. We need the Government to take a lead, to view the evidence and to say—in whatever precautionary terms it chooses—what planning authorities should do, so that there is a level playing field.

Des McNulty (Clydebank and Milngavie) (Lab): The industry is keen to assure us that the masts have no health impact. Two possible issues arise, even if one accepts that assurance. First, the extent of the use of telecommunications or the technological changes associated with the industry might be such that what is a low-level risk at the moment might become a higher-level risk in the future. I take it that there is nothing in planning law to deal with that eventuality. I assume that you have influence only over where something is sited.

Secondly, if permission was granted to site one type of mast, and in 10 years' time the company wished to replace the mast with a new form of technology, would there be a requirement for a repeat planning application that could take account of health considerations? Once planning permission had been granted, could a company put whatever it wanted on a particular site?

Bill Hepburn: On Des McNulty's first question, on the extent of technological changes, on what might become a higher-level risk and on the influence of planning, I think that I can refer back to my previous answer: without firm guidance from those who are statutory advisers to the Government, including the National Radiological Protection Board and the Health and Safety Executive, planning authorities cannot, in my view, be expected to make decisions themselves about the level of risk.

I now come to Des's second question. Once permission is granted, inertia sets in. Replacements of masts of the same height or additional apparatus on a mast installation do not usually require planning permission, or at least they are at the lower end of permitted development and are not considered significant—in Highland, we would not normally contest such replacements.

Councillor Hamilton: At present, we are talking about the visual impact of masts and about competition. From a local government perspective, those factors are easy to measure.

Members will appreciate the difficulty that local government has. I represent the second smallest local authority in Scotland. There are very few people in that council with the expertise required to judge whether there is a health and safety issue.

The City of Edinburgh Council and Glasgow City Council are represented here today, and members will be asking them specific questions. Being much larger authorities, they might have a deeper understanding in their departments. It comes down to the statutory bodies making a determination on health and safety issues.

I watched a television programme about beef on the bone last night. You have a great challenge to resolve that one, because you will get every opinion under the sun: the companies will argue one way, and the environmentalists another. You have to make a judgment. That judgment can be made only at the centre, because local government does not have the resources to make it. Aspects such as visual impact should be dealt with by the appropriate planning authorities.

There is a fundamental flaw in the system. Firms, owners, employers and the general population are saying, "Something is wrong. We have to do this, but they can do that." It is as simple as that.

Members might wish to discuss the more detailed questions among themselves.

Mr MacAskill: I do not want to oversimplify matters, but am I right in saying that COSLA wishes a national plan to be introduced but that, within that, full planning approval would provide the regulatory framework that you require, and that that would give you sufficient room to manoeuvre, depending on circumstances? Is there something more than that, or does that cover the national plan and full planning approval in a nutshell?

Bill Hepburn: There should be national guidance and full planning approval for major structures, certainly. I am not trying to argue—certainly not on the part of my council—that planning permission is necessary for every last piece of telecommunications development. That would be impossible.

There are many levels of permitted development now which are very minor in orthodox planning terms. As the industry evolves, that is becoming more and more prevalent. Burglar-alarm-type antennae can now be sited on buildings: we would not normally consider that to require planning permission. It is not even a matter of permitted development. The term de minimis comes to mind: such devices are so small as to be insignificant.

With regard to health issues, it makes something

of a mockery to try to control the major structures when all those minor structures can be erected with no planning control.

Tavish Scott: To follow up Kenny MacAskill's point about a national plan, the logic of Councillor Hamilton's points is that health considerations have to be at the centre. There are such big implications that much research and careful thinking are required. COSLA and the local authorities would be looking for advice from the centre, in other words, from the Executive. They would argue that local government bodies are too small to make such decisions on the health implications of planning applications because of the shortage of resources that has just been described.

Councillor Hamilton: There are 32 local authorities. I do not know how many thousands of councillors and officers that represents. Within those 32 local authorities, groupings will determine how they deal with their issues. The responses that we received, to which Mary Dinsdale referred, showed the diversity of opinion, although the vast majority were of one mind about planning applications.

10:15

I am sure that, in Edinburgh and Glasgow, there has been far more detailed debate on health and safety issues than in Midlothian, Clackmannan or the Highlands and Islands, as those local authorities have neither the number of officers that we have to support us—and it should be remembered that councillors are, by and large, part-timers—nor the level of expertise that exists within our divisions. I mean no disrespect to the smaller councils, but they cannot afford that level of expertise.

I imagine—although I cannot be sure—that major authorities such as Glasgow City Council, City of Edinburgh Council and Dundee City Council might have more available resources to get hold of that information. That is a personal opinion, but I believe that it would reflect that of the politicians and COSLA. We hope that the Scottish Government, along with the national Government, will consider the best way in which to deal with that situation. We can contribute to the debate, but I do not think that that responsibility should be with local government.

Tavish Scott: Do you think that there is a danger of effecting a two-tier structure? My own council is Shetland Islands Council, on which I served as a councillor on a planning authority. In one case, an electrical substation was sited right next to somebody's house. The council officials there—you are right about the need for advice—did not have the resources.

Councillor Hamilton: I am not saying that there will be a two-tier structure. City of Edinburgh Council and Glasgow City Council might disagree. They receive advice and deal with it in the way that is deemed appropriate for each authority. Although they are large authorities, they might disagree on the best way to proceed. A much bigger debate must take place, which we will take part in. That is the way in which the matter must be dealt with.

Bill Hepburn: The danger is that there might not be clear guidance on how to deal with the health issues in the different circumstances that might arise. With a prior notification procedure or a planning application procedure, there will be great variation in the decisions that are taken by different local authorities, which might weigh those factors differently.

Des McNulty: If the focus is on health considerations, and if planning legislation allows you to deal with the physical aspects of the structure only when the structure is being put in place for the first time, is planning legislation the most effective means of dealing with the health or broader environmental impacts? To take another environmental/health issue, air pollution is not dealt with by planning; it is dealt with through other forms of legislation. Do local authorities have a view about balancing planning controls with other mechanisms?

Bill Hepburn: I do not disagree with what you are saying. The planning application process at least allows a broad community view of the acceptability of development. We can feed into that the expertise of other regulatory authorities—on water and sewerage, for example, or the expertise of the Health and Safety Executive—which might be able to comment at the time of the planning application on what the implications will be. However, the planning application procedure is not suitable for making individual decisions unless there is clear guidance on health concerns such as individual telecommunications apparatus.

Des McNulty: Another, more general, issue is connected with that. If you want to take community planning forward—I know that COSLA is particularly interested in it—you might need to consider community planning not in the context of planning legislation alone, but in combination with other forms of legislation. A community planning framework might involve a comprehensive, joined-up look at a whole series of issues that impact on a locality. This issue might fit into that framework.

Bill Hepburn: We like to think that we are moving towards that. We have a local planning section in Highland Council that is called community planning and economic development. It is an attempt to bring together all the interests of the public, public bodies and industry—the

community generally—in forming a plan. Telecommunications would certainly be part of that.

Mr Tosh: I have some detailed questions, but I would like to pursue the big issue of precautionary principles. We interviewed the National Radiological Protection Board a couple of weeks ago. Its judgment was that it could detect no health issues, but that it was happy that Government should tell it that a precautionary principle was none the less justified.

This morning, Bill Hepburn has also said that he does not see a role for planning because it is a health issue on which there is no evidence. However, in COSLA's written submission, it said that until such time as conclusive evidence was available—which might be never—it wanted to adopt the precautionary principle. How does COSLA justify that if it does not feel that the issue is relevant in planning terms? Are you simply saying that you know that there is a risk, that you would be grateful if the Government took the decision for you, and that you would implement it?

Mary Dinsdale: The concern raised in that point has been reflected by the number of councils that have adopted the precautionary principle on their own premises. Until there is guidance, councils will have problems justifying or explaining decisions to the public—so there is a need for some central guidance.

Mr Tosh: So, although you are sceptical about the evidence, you are fully signed up to the principle of a precautionary approach. Is there no ambiguity about that? I thought that Bill Hepburn's view on the health issue—expressed quite trenchantly—was that he was unimpressed by the argument. Notwithstanding that, are you firm that you want a precautionary principle?

Bill Hepburn: Perhaps I should clarify my position. I am not "unimpressed" by the view that health might be an issue, and I am not decrying the view that health might be an issue; I am simply saying that it is an issue that it is difficult for the planning process, as framed, to take into account. I fully agree with COSLA's evidence to you that the Government should take it into account. It is an up-front public issue just now. Indeed, the Government is taking it into account in so far as the House of Commons Select Committee on Science and Technology recently issued a report on it.

Because it is difficult for the planning process to take the health issue into account, we need clear Government guidance on how planning authorities should deal with it.

Mr Tosh: If we agree that we are considering the principle of taking a precautionary approach on the siting of major telecommunications apparatus, and bearing in mind the fact that you do not want full planning control over the more minor installations, do you feel that the same precautionary approach ought to apply to the siting of the lesser fixed telecommunications equipment—such as micromasts and cells—as applies for major apparatus?

Bill Hepburn: I am no health expert. Again, I cannot alight on a linear or vertical distance that would be safe in the circumstances. From what has been said on health, and from what I have read in the literature, it is my interpretation that the health effects are probably quite localised.

However, it is impossible for local authorities to take their own clear, conclusive, individual views on that. In those circumstances, it is for the Government to take the lead and to give local authorities and the industry guidance on the level of precaution that is justified.

Councillor Hamilton: You are making the point that I made earlier. We are getting responses about visual appearance and about the physical apparatus that is causing concern. A debate is taking place, but there is a perception that there is a health and safety issue. The representatives of the larger councils might give members more specific information on that later. We need a more cohesive debate on a wider basis.

As a layman, I can tell you that 150 people attended last week's seminar. We had to turn people away. For the first time, COSLA had to move the venue because of the volume of the response, and we still had to turn people away. The people who attended came from all walks of life. As chairman of that seminar, I was taken aback by the number of people who were there. Some people were there for personal reasons; others were representing public organisations or the private sector.

As an official, Bill Hepburn takes the view that there is no point in a council rejecting an application if it will end up in court several months later because it cannot sustain its objections. We have major difficulties in deciding how to proceed. We are trying to get some semblance of order across Scotland, so that we can work in unison. It may be that that leads to oversimplification, but we need some guidance.

Small changes do not need planning applications. If someone wants to build a massive extension on their house, they must go through the planning process, but if they want to change a door, they do not need a planning application. If a company wants to build a 100 ft mast, it will have to apply for planning permission, but if the mast is less than 15 m, it does not need planning permission—although it would still be a massive structure.

At the moment, different local authorities have different policies, which is not helpful. We need consistency across Scotland.

Mr Tosh: I want to move on to the way in which the precautionary principle might operate. It is all very well to ask for guidance, but the implementation of a planning policy on a local basis would require definitions and operational standards to tackle the issue of proximity. In asking the Scottish Executive for national guidelines, how would COSLA want the definition of closeness to be established? What role should the local authority have in such decisions, and to what extent would other bodies, such as health boards and the national advice agencies, feed into that process? If we wanted to build in any degree of local consideration and influence, surely there would be a problem in seeking the consistency across the country that David Hamilton has just mentioned.

I do not think that COSLA can dissociate itself from the issues of definition, even if there were central guidance, because there are implementation and operational considerations. How do you see that working?

Bill Hepburn: I do not think that I can adequately answer that question. Perhaps some of my colleagues from the other local authorities, who are more involved in health issues, can comment on that later.

My reading of the situation is that all the authorities and operators are complying fully with current guidance. Without any scientific reasons for doing so, the guidance might be lowered fivefold to give comfort to the public and to bring it in line with other European and international guidance. As far as I am concerned, that is a question for experts. Given the degree of public concern, scientists will be required to give advice to Government on suitable precautionary distances or circumstances. It is not a question that we, on behalf of COSLA, can easily answer.

10:30

Mr Tosh: It will be difficult for us to produce a report that may well ask the Scottish Executive to establish a precautionary principle and to take account of all the public concerns that David Hamilton mentioned, but which does not offer any guidance on what constitutes “close” and on what would be reasonable central guidance for the Executive to issue to local authorities. We—and COSLA—have a responsibility to give some indication of what we are looking for. If COSLA wants to be able to operate that guidance on the ground, it will need an idea of what it means in practice. One of the first questions that the Scottish Executive will ask is what exactly COSLA wants.

The Convener: Instead of pushing for an answer that COSLA cannot give at the moment, we should flag up those areas with the organisation and follow up the points on the back of its conference and further consultations with member authorities. However, Murray Tosh is fundamentally right. Although we are discussing the general issue, we will try to address some specifics in our report, which will have a wide-ranging impact on how the matter develops.

Councillor Hamilton: We will give a written response to that matter.

The committee has an overview. I understand that this is its third meeting on the issue and that it has taken evidence from witnesses from different parts of the country, from different areas of expertise and with different opinions. When COSLA discusses the issue, it will take into account evidence from the seminar, the deliberations at this meeting and a review of papers up to now. I take Bill Hepburn’s point that local authorities will answer your specific questions in the second part of the session. COSLA will give a rounded view and submit a written response.

The Convener: We are trying to establish COSLA’s view and to open the matter up for wider discussion.

Mr Tosh: A related question has come up in previous sessions. When the precautionary principle has been discussed, the question has been raised about which buildings and uses should be covered. There is a view that residential property should be subject to a different spatial protection from that for buildings with less intensive occupation, such as office and commercial buildings. If COSLA has opinions on that, we would like to hear them now; if not, we would like the organisation to express them soon, as central Government guidance to local authorities is bound to contain its own views on the subject.

Furthermore, if consents are given to telecommunications installations in relation to existing neighbouring uses, presumably the guidance given would require rigorous scrutiny of any further planning applications within the cordon that might impact on the telecommunications use.

Do you have any immediate reactions to the different types of use or building, or are you still considering the issue?

Bill Hepburn: I can see the problem. My answer returns to David’s earlier answer. COSLA is an association of 32 local authorities that have neither the detailed expertise nor the time required to tackle the issue. As COSLA has only recently held

its seminar on the issues, perhaps there has not been time to put any meat on them. In practice, given the existing spread of the telecommunications industry in rural and urban areas, it is a difficult issue.

Tavish Scott: I am not sure that I will get very far with my questions as you are obviously developing your thoughts on the subject. We have considered evidence for a blanket approach to not siting masts close to buildings. Do you have a view on that? Perhaps you will consider it in the written evidence that you will provide. For example, can masts be sited in school grounds as long as they are not close to, or on, schools? There are practical issues for you to think about. What is your view on the difference between taking a precautionary approach for individual buildings and taking such an approach for sensitive areas?

Councillor Hamilton: I will answer the first part, and Bill Hepburn can address the detailed point. The responses that we have received show that some authorities have taken a precautionary approach where sites for masts are close to buildings. Those authorities are reviewing that position as research and opinion develop. Some authorities took a decision early on, but are now reviewing their position and taking different decisions on new structures. A local authority might determine that it will not build on its own premises, but a mast can be sited on private land across the road. We have to deal with that problem.

Bill Hepburn: I am not sure that I can answer your second question on the difference between the precautionary approach for individual buildings and that for sensitive areas. I explained the difficulty that will exist because, clearly, microcell developments will not require planning permission, but other telecommunications developments will. There will be no point in having a policy that is based on health issues for larger structures that could not control smaller ones.

Local authorities will find it difficult to deal with these issues, unless there is clear guidance from Government on what the level of risk is and consequently what, in the interest of the public, the level of precaution should be. Ideally, the system will work much better if the Government issues clear guidelines so that every local authority and operator thinks in the same way about things.

Tavish Scott: Can you clarify whether the wider economic issues in network provision are material planning considerations? There are arguments about how wide the network provision should be. There are areas, especially rural areas, that would not have coverage if there were strict national guidelines. Also, how would you take account of the desire of society to have adequate network provision in densely populated areas?

Councillor Hamilton: I do not understand why national guidance would eliminate coverage in certain parts of Scotland.

Tavish Scott: If there were a national plan that had a presumption against development in certain areas, such as sites of special scientific interest, tracts of the country would be ruled out from coverage and people in those areas would not have facilities to use mobile phones.

Councillor Hamilton: BBC masts cover the whole of Scotland.

Tavish Scott: I assure you that they do not. Many parts of Scotland are not covered.

Councillor Hamilton: In any case, as Bill Hepburn said, there are not many areas in northern Scotland where a mast would not be put up, so I do not think that that issue would arise. Surely guidance would not presume against development.

Tavish Scott: That is interesting.

Linda Fabiani (Central Scotland) (SNP): I have a question arising from something that Bill Hepburn said about microcell development. When we spoke to the operators, it bothered me that there is no compulsory system for labelling where microcells are placed. Do you see any value in a central register for each local authority plotting each location where there is any such equipment, and in a labelling system at those sites?

Bill Hepburn: I do not see much value in a labelling system from a planning point of view, except that it would lead to general recognition when work is going on in buildings. I am pretty sure that the roads authorities would want installations labelled so that they knew what allowances they would need to make during maintenance or renewal work.

Widening the question out from microcells, it would be valuable to have a proper register of all installations in open countryside and in urban areas, so that everyone knows where they are and operators can be directed towards them.

The Convener: Time is limited, so I ask members to keep their questions as short as possible.

Des McNulty: I would like some specific information about material planning considerations. What process is used for setting the parameters of what constitutes a material planning consideration, and who determines what is considered material?

Bill Hepburn: That is a good question. Material planning considerations are defined to some extent in national guidance, but there are no

absolutes, and material considerations can be framed widely in the particular circumstances of any case. If one considers health, case law shows that the perception of health effects can be considered material. If one considers the broad process of planning assessment in relation to materiality, decisions are made on giving weightings to the different material factors. There must be reasonable evidence as to what the effects might be in terms of the amount of traffic, the emissions from a chimney, or some other measurable, quantifiable effect that could be substantiated in the courts if necessary.

Des McNulty: Does your answer imply that different criteria are being employed by different authorities to determine materiality and that, even within authorities, different weightings may be given to different cases?

Bill Hepburn: I cannot answer for different authorities or speculate on inconsistencies within authorities. However, in my experience, the materiality of any facet of a planning application is a matter of careful judgment and there is scope for variations in judgment.

Des McNulty: If health were to be a consideration, would it be unusual for the councillors making a judgment or the planning officers advising them to have relevant expertise in health?

Bill Hepburn: Yes, it would.

Des McNulty: Suppose health were to be a material consideration. Would you seek an alternative source of advice, such as the NRPB?

Bill Hepburn: The current guidance on telecommunications is that planning authorities may consider the perception of a health effect material, but the innuendo is that it should not be taken into consideration in any planning decision. The NRPB advises that health issues are matters for the Health and Safety Executive and Government.

Des McNulty: If health is not dealt with as a material planning consideration, is it reasonable for us to consider introducing a precautionary approach at national level with health as a major factor?

Bill Hepburn: It is reasonable for the Government to recognise public concern and to seek proper advice. As that public concern is manifested in planning decisions, the Government should be giving planning authorities proper advice based on the expertise that is available.

10:45

Des McNulty: What about other forms of applications, ones where there is no adopted local plan or a local plan is out of date? How would the operation of material planning considerations relating to telecommunications developments be dealt with?

Bill Hepburn: It would not be dealt with differently, except that the status of land would become more of a material consideration. Development should be considered in the context of the development plan unless other material considerations indicate otherwise. However, the situation would not be greatly different. Planning applications often raise health effects and authorities might require advice from health boards and other such bodies. Mostly, authorities are not in a position to make judgments about the technicalities of health.

Des McNulty: In your submission, you suggest that adequate publicity and consultation is required. Who should generate that information, who should be consulted and how might you determine what would constitute an adequate level?

Bill Hepburn: Consultation normally takes two forms. We consult regulatory or other bodies that might have an interest and we consult the public. I do not see that process changing. It would not be normal for planning authorities to consult the health authority. In this instance, I suspect that we would not get clear answers if we did, given the current state of research. On behalf of my council, rather than COSLA, I suggest that we need clearer Government guidance on the issue.

Councillor Hamilton: On any planning committee, there are several key people, one of whom is the representative of the legal department. He sits and does not say much during the process but kicks in when the committee decides to go against a planning application and informs us what would happen if we did so.

The local planning area structure plans that we are involved in are extremely helpful for all the planning authorities. The City of Edinburgh Council, West Lothian Council, East Lothian Council and Midlothian Council are working to our structure plan. We then work within our local plans. We try to work cohesively throughout the area—Edinburgh can have an opinion on what happens in Midlothian and so on. If a local authority decided not to agree to the siting of certain masts, it would be told by the legal department that doing so without an expert legal opinion on the matter might result in the authority being taken to court.

There are concerns about many issues. Therefore, the quicker that we can get to a position where we can develop a comprehensible strategy, the better it will be.

Des McNulty: It is not entirely clear whether we

are going down the correct routes in the context of weaknesses in the planning structure.

Councillor Hamilton: Our submission makes our opinion clear. Certain factors—the visibility of masts and so on—are measurable. The difficulty starts when we consider health aspects. Research is still on-going in that area and the position is different now from the situation a year ago.

On the planning issue, not the health and safety part, a judgment should be made that we treat like with like, depending on what authority we are dealing with. An area relating to that can be seen to be cohesive throughout Scotland, health and safety notwithstanding.

We will give a written submission detailing how each of the authorities are dealing with the health and safety issue. However, the fact that we are dealing with 32 local authorities means that different opinions will be expressed.

Des McNulty: That is my concern. In a sense, what you are saying is that you advocate a precautionary principle, but that the mechanism for enforcing that is inappropriate. Is that a fair comment?

Councillor Hamilton: We do advocate a precautionary principle, but I will let Bill answer.

Bill Hepburn: That is all the more reason why Government should take over.

Des McNulty: Government and other agencies perhaps?

Bill Hepburn: Yes. The Government in association with the statutory agencies.

Mr Tosh: I want to go back to Des McNulty's question about health being made a material planning consideration for telecommunications. Is COSLA concerned that if we did that for telecommunications, there might be a lot of other areas of land use and practice where health would become a consideration? Are we opening up a major issue, or can telecommunications be treated in isolation?

Bill Hepburn: Health issues are material considerations if there is evidence that they should be. My view, as I have said this morning, is that there is uncertainty. No conclusions have been drawn and none may be for some time. In those circumstances, rather than letting individual planning authorities reach separate judgments about how much weight health should be given, it would be helpful for local authorities—and perhaps for industry, although I cannot speak for it—if Government stepped in to give an overview of whether and to what extent a precautionary principle should apply.

Nora Radcliffe: Which factors should be taken into account in deciding the other environmental impacts of masts, particularly in urban areas?

Bill Hepburn: I have not dealt with a great many masts in urban areas. In the Highlands, those we have dealt with have tended to be in open countryside. The issues are orthodox: the visual impact, the impact on the landscape, whether access can be gained to the site, whether the site needs separate access and whether power can be supplied to the site. In urban areas, controversy has usually been caused by a combination of the appearance of the mast—which inevitably is very utilitarian, although that is slowly improving in some cases—and whether there is a health issue. Are any families living in accommodation close by being affected?

Nora Radcliffe: Another area that merits a bit more discussion is the distinction between what is covered by planning legislation and what is covered by licensing. Will you say a bit more about that?

Bill Hepburn: Licences under the Telecommunications Act 1984 for individual operators are very large—as big as several telephone books. They cover a number of operating factors that have nothing to do with planning permission or control, although all of them put some onus on the operator to respect the environment and to seek to minimise the impact of their installations. It is a dual system, which the Government presumably will insist continues to operate, and which will operate as we enter the third wave of telecommunications that we all expect.

Nora Radcliffe: You mentioned the need for a clear complaints procedure. It would be useful if you would expand on that. What would it involve? How would the procedure work?

Bill Hepburn: My view is that there are two levels of complaints: complaints about the way in which a planning situation has been dealt with and complaints about the appearance of apparatus on the ground. There are tried-and-tested methods of dealing with the matter. That can involve going through a system of planning permission, for example, prior notification if it is introduced, and if people are not satisfied with it, they have recourse to the courts or to a local government ombudsman.

I am not qualified to speak on the other method, which concerns the licensing side of things and whether an operator is fulfilling all the terms of its licence. I am not aware if there is a telecommunications ombudsman who might deal with that issue, but I am sure that there must be some procedure in the licensing regime by which the matter may be addressed.

Nora Radcliffe: So there is a clear complaints procedure as far as local authorities are

concerned.

Bill Hepburn: Yes. If you look at it across the board, local authorities have a wider interest than just that of a planning authority. They may have an interest as a land owner, as protective environmental health authorities, or a number of different interests, which mean that they may wish to take action against operators, not through the planning system but through the licence itself.

The Convener: If we had the system that is referred to in your document, who would arbitrate? Who would be the decision maker? How would it fit with the planning appeals procedure that was mentioned?

Bill Hepburn: As is the case in other spheres, I imagine that the answers to those questions easily could be set out in guidance. A distinction could be made in any guidance between what the planning system and the other regulations that are involved could do, and if people are dissatisfied for any reason they can go either to an ombudsman or to the particular Government department that regulates telecommunications.

The Convener: So the complaints procedure will relate to the licensing element, not to the planning element?

Bill Hepburn: In my understanding, the complaints procedure will relate principally to the licensing element, and there are other procedures that already are established within the planning regime with which people can take up their grievances.

Councillor Hamilton: I do not think that there is anything at the present time. Currently, if someone takes a complaint through local government to the ombudsman, it goes through a number of mechanisms. The ombudsman does not just look at the issue, but at how the council responded to the issue, how each of the appropriate departments dealt with it, and whether it was dealt with in an effective way. We do not have an established system. It would be difficult for an ombudsman, or any independent authority, to make a judgment. That issue may need to be clarified as matters progress.

Nora Radcliffe: Paragraph 3(b) of your submission states:

> "The extent of local authorities' control must be defined, eg what control authorities have in the event of an operator ignoring advice; also, the responsibilities of other agencies who have control of non land use aspects, such as the role of the NRPB and House . . . and of telecommunications companies themselves."

What is your view on the appropriate extent of control by local authorities? What are your views on the responsibilities of the other agencies that were mentioned, and how they would fit into the whole process?

Bill Hepburn: With regard to the first part of your question, our view on what should be the extent of control is simple: there should be planning permission for major structures. That would bring into line a lot of the issues regarding telecommunications and would let them be dealt with in a normal way. The difficulty with the present system, and perhaps with the prior notification procedure, is the extent of local authorities' ability to control different aspects of development. Almost by definition, a prior notification procedure makes the assumption, "This is really permitted development. It must be approved, unless there is some out-of-the-way reason that the authority has to take into account." Whatever happens, Government has to provide clear definitions in the new guidance.

It is a possibility that if they bring larger telecommunications developments into planning control, they can define the main materialities that were mentioned earlier this morning and define what should be taken into account by local authorities and what may, in some circumstances, receive less weight.

11:00

Nora Radcliffe: Will you expand on how the NRPB and HSE feed into that?

Bill Hepburn: The main way that they feed into it is not through the planning process, but through the operators having to observe the current guidance and regulations from HSE, as advised by the NRPB.

Nora Radcliffe: Is that outside the planning system?

Bill Hepburn: Yes.

Nora Radcliffe: Would that not be brought into the planning system by requiring them to make a planning application?

Bill Hepburn: It would only be brought in to the extent that if there was any doubt about an installation, we would ask to be assured that the installation complied with all relevant HSE guidance.

Nora Radcliffe: Would that happen under prior notification as well?

Bill Hepburn: Yes, there is no reason why that should not happen under prior notification.

Helen Eadie (Dunfermline East) (Lab): What guidance do you think the NRPB should issue to take a sufficiently precautionary approach. We have heard a lot over the past few weeks about where local authorities are at the moment. What specific advice should be given?

Mary Dinsdale: That comes back again to what is considered a safe distance for masts to be located from buildings.

Helen Eadie: Do you think that Government advice on telecommunications developments would be best provided through the national planning policy guidelines or the planning advice notes or national guidance of a different form that would be regularly updated? What should that guidance address?

Bill Hepburn: It would be helpful to have national guidance. That would be consistent with the guidance on other planning factors. When a national planning policy guideline appears, it is usually accompanied by a planning advice note, which relates to good practice, and a circular on the degree of interpretation that the Scottish Executive thinks might be put on the NPPG. All three types of guidance could be appropriate.

Helen Eadie: You have already touched on my next question. How do you see the planning and development of telecommunications infrastructure fitting in with the concept of community planning?

Bill Hepburn: One of the difficulties is that, as recent experience in the Highlands shows, this is a dynamic industry. It produces a lot of proposals and it is difficult to fit that in within the time scales of the community planning process—by which I assume that you mean the production of structure and local plans. It is not impossible; it can be helpful to take telecommunication developments into account in the community planning process. For example, in Highland, various meetings are held prior to local plans appearing, in the planning for real process. That is an opportunity to let the public air their views and to be advised of impending developments in their area. It could be taken into account but it may need careful handling in relation to the rate of roll-out of operators' network programmes and the planning process as a whole.

The Convener: As there are no other questions, I thank the COSLA witnesses for coming along. I know that you are going to sit through the next session.

We will now have a short comfort break.

11:03

Meeting suspended.

11:16

On resuming—

The Convener: I welcome members to the resumed meeting of the Transport and the Environment Committee. There are certain areas from our discussion earlier this morning that we wish to follow up in writing with COSLA. Councillor David Hamilton indicated that there would be no problem with that, which we welcome.

This next part of the meeting will be difficult, because of the number of witnesses. None the less, we would like to get some more detail about the issues that we are investigating, particularly from an individual local authority perspective.

I formally invite David Banford, Alan Henderson, Brian Kelly and Bill Hepburn to participate in this session—other inputs would also be welcome. I want the witnesses to focus on how individual local authorities deal with the issues.

I begin by asking how local authorities' precautionary policies on the siting of telecommunications developments relate to councils' role as the planning authority. That issue has been raised on a number of occasions.

Brian Kelly (Glasgow City Council): The position in Glasgow is best described as bitty—it is all over the place because different committees consider the issue. I know that this committee's main concern today is planning, but other issues arise in our economic and physical regeneration committee—a difficult one to remember. Other issues also arise on the planning and development control front and in environmental services, where I report back on our findings.

Although I say that the policy is bitty, it is, nevertheless, developing. We have not yet got a document that we can refer to and say, "This is Glasgow's position." The policy affects, and surfaces in, the areas of different committees.

Alan Henderson (City of Edinburgh Council): From Edinburgh's point of view, the ownership side of considering these installations is dealt with separately from the planning process—it is dealt with through a separate range of committees. In view of public concerns about the risks associated with this equipment, the council undertakes a formal consultation process with the local community before it comes to a decision on installing masts on its premises.

David Banford (Dumfries and Galloway Council): It is the same in Dumfries and Galloway—we have no set policy on the precautionary principles. This is a relatively new, evolving concept; it is clear from the evidence that the committee heard this morning, and from the debate at last week's conference, that there is a serious lack of evidence on which to base a tangible policy. The authorities look to Government for that guidance.

The Convener: We are particularly interested in the policy in relation to property owned by the authorities. Have the authorities faced any contradictions or difficulties?

Brian Kelly: Glasgow currently has more than 70 masts, aerials and antennae—call them what you will—on top of multi-storey blocks. The interpretation has been given that that might be better than placing them on top of schools, for example.

Nevertheless, we have to examine the history, which, I am told, goes right back to the 1960s, when developments started for different forms of communication. We are addressing a new issue in the context of a long history. It will be all the more difficult to take a new position for that reason—we cannot turn the clock back.

The Convener: The issue of income has been raised at a couple of this committee's meetings and in some media reports. What income do you expect from the operators from siting masts on council property?

Brian Kelly: Personally, I have always regarded it as a low blow when that matter comes up in the media. Clearly, the council is not placing masts on its property with the intention of gaining income. The fact that we get income for it is another issue; it is not a matter that I ever bring before committee or on which I have been questioned. From the perspective of public health, the advice that I have offered has been taken.

In my council, as far as I am aware, there has never been a question that income is a motive—quite the contrary. That has been said in the press but, as I said, such a claim is a low blow.

The Convener: Does anyone else wish to comment on that? It is a widely held view.

Mr MacAskill: I am curious to know the ballpark figure. I appreciate that you might think that that is a low blow but, if local authorities have to site these things, it seems perfectly legitimate and reasonable for them to charge for it. Is there a pattern of charges? Are some local authorities perhaps undercharging?

Brian Kelly: To try to help you, I can tell you that I have seen written evidence that the figure for Glasgow is in excess of £500,000 per annum. I have compiled the data and seen the figure in reports.

Mr MacAskill: Is there a methodology for how charges are levied? Should there be?

Brian Kelly: I reiterate that I am not involved in that, so I do not know how a figure is set or derived. It is not something that I have ever been party to. I know that there is a charge, but I have no way of assessing what a reasonable charge should be.

The Convener: Would other council representatives care to comment on how they have derived their respective charges?

Alan Henderson: I am speaking from a planning viewpoint. I do not know the details of ownership and income.

Mr MacAskill: I would not like to see a Dutch auction in which, for example, Midlothian undercuts the City of Edinburgh and somebody sites a telecommunications mast 100 m from the boundary. From a planning perspective, could you see the advantage of a national tariff as opposed to a locally operated rate? If there is national planning, is a set tariff laid down, as may be the case for other installations on local authority property?

Brian Kelly: It struck me earlier in the meeting that there could be some difficulty between local authorities if, for example, Glasgow had a policy of not wanting a mast and an adjoining authority was happy to have one 50 m from the boundary. How would Glasgow react to Renfrewshire in such a case, or vice versa? I suspect that tensions will arise between authorities, irrespective of the financial aspect, as a result of policy differences.

Bill Hepburn (Highland Council): I do not think that such matters can be taken into account when dealing with the individual planning applications. If they were, developers might be accused of buying planning permission. We make a strong point of divorcing any consideration of a lease arrangement from planning considerations.

Des McNulty: This money must go into a black hole in the authority, as I have never heard of it before.

Has any authority considered hypothecating income from the siting of a telecommunications mast for those elements in the community that might be immediately affected? For example, if the mast was put on the top of a tower block, the money might be used to improve the amenities within that tower block.

Brian Kelly: That is certainly not the case, to my knowledge.

Des McNulty: That might be a mechanism for allowing people to make a decision for themselves about the cost benefits of an installation.

The Convener: I understand that, if someone owns a private home in a high-rise flat, they will receive a share of the rental income. Council tenants get nothing, but private householders get their divvy-up of the rental money. I have heard that from several residents.

Councillor Hamilton: Am I allowed to speak in this part of the meeting?

The Convener: Yes, you are entitled to speak.

Councillor Hamilton: If a mast is built on a community centre—and I know of such examples—the money goes directly to the

community centre. That is hypothecation, if you like. As in the case of developers who want to build houses in a council area, the potential contribution has to be considered. I do not know Glasgow's budget, but I would have thought that £500,000 is not even a ripple—it is nothing in comparison to the size of that council's budget.

As an elected member, I think that the really important thing is to ensure at all times that any request for an installation is separated from the financial benefit that the local authority may or may not get. I would be extremely concerned if the financial consideration was prioritised to the detriment of either the visual or the health issue, which are the most important considerations.

I cannot answer in any specific terms. There would be no competition between Edinburgh and Midlothian. Midlothian won Ikea—Edinburgh is extremely arrogant about that. At the end of the day, such competition causes ructions. There are examples all over the place of one council making a decision that means that operators find it easier to go to another council. Standardisation will help to alleviate that problem.

The Convener: I want to ask about the application process. Is it easier for local authorities to put masts on the roof of high-rise flats than it is for a private landowner? Is the process the same?

Bill Hepburn: As I understand it, the operator, not the local authority, would be the applicant. If it were the local authority, there would be a different planning procedure.

The Convener: However, if the council has an interest, as it is the owner of the property, is the process just the same?

Bill Hepburn: If the council has an interest in the siting of the mast, a decision must be made whether the case is referrable to the Scottish ministers for approval.

The Convener: I want to ask about what the current framework does and does not achieve, in addressing the needs of telecommunications development. How does that advice come to sit with you?

David Banford: Could you clarify what you mean?

The Convener: I mean the current framework—the one that is operating now, the status quo provision of advice and so on.

David Banford: The current system?

The Convener: Yes.

David Banford: The current system is completely inadequate. The limit is 15 m for permitted development. That is the measurement that the industry uses: it builds right up to the 15 m limit. Some of the structures are fairly inconsequential, in that they are slim monopoles that may have two aerials fitted at the top. However, much more substantial steel gantry tripod structures can also be built pretty much at will by the operators if they are permitted development. The planning authorities have no effective mechanism to deal with any objection that they might have to those structures.

The public feel at a loss, aggrieved and almost abandoned by the system when they see 15 m gantries being erected in close proximity to houses, with no redress. That has a major effect, but the industry carries on regardless. I know that the licensing system obliges companies to have regard for environmental considerations, but it is very difficult for the planning authorities to make headway in relation to that legislation. That raises the question who should police the licence. That is not the responsibility of the planning authority. The public perception is that the licences are not policed and that the whole system is inadequate.

11:30

Alan Henderson: City of Edinburgh Council has experience of operating under three different procedures. First, the permitted development rights mean that we have little control and that fairly large installations can go ahead without people living nearby knowing anything about it. The public cannot believe that such large structures can be erected without people receiving neighbour notifications or being allowed to contribute to the process.

Secondly, in conservation areas, we have to be notified of installations and we can say whether we think that they would adversely affect the character and appearance of the conservation area. Nevertheless, that is not a complete planning process—it is done outside the public arena and is not open to public scrutiny. That causes us concern.

Thirdly, several conservation areas in the built-up areas of the city have article 4 directions—approved by the Scottish Office five years ago—which remove permitted development rights for several use classes, including the class that applies to telecommunications developments. In those areas, we have experience of operating a system in which the operators must submit a planning application. We have found that very helpful because it gets the community involved.

We have also found that the operators respond positively to that approach—they know that we have put that direction in place in areas where the environment is particularly sensitive. They usually want to put their installations on top of tall buildings, which are often listed. They know that

unless they address the concerns, they will not receive planning permission. They work with us to the extent of erecting mock-ups of the installations during the consultation period, to allow the public and amenity groups to see what the apparatus looks like. That experience has led the City of Edinburgh Council to believe that such powers should be applied to all proposals; we support COSLA's approach to that.

Brian Kelly: I am not a planner, so I could not add to what has been said.

Mr Tosh: I want to pick up on the point about enforcement. Are those policy areas where detailed planning is required effectively policed or do you find that you have difficulties with the operators? Do the operators change the specifications or fail to comply with conditions? There are always practical difficulties in enforcing planning conditions. It would be useful to know whether the practice of planning is proving effective right through to the final development. That would give us a steer as to whether a further range of applications would be helpful.

David Banford: My experience from the few cases that I have dealt with that required a planning application is that they complied with the terms of the permission. To date, I have had no cause for concern with any of the sites. Generally, the industry acts responsibly when planning permission is required for installations.

Des McNulty: I am sympathetic to the idea that we should consider generalising planning requirements, particularly for neighbour notification schemes, so that people know what is going to be built in their locality and have an opportunity to make their views known. Is there an opportunity for the planning or licensing authority, as part of its dialogue with the operator, to discuss alternative sites that may be more environmentally suitable, either because they are further from housing or are in a less intrusive setting? I know about one example of an operator putting up a mast overnight without notifying the neighbours. In my view, abundant alternatives were available nearby. In addition to considering neighbour notification as a planning requirement, do we need to consider the terms under which an authority can refuse an application—for example, because a better or more suitable site is available in the immediate vicinity?

David Banford: In my experience, if the planning authority finds a proposal unacceptable, one of its first responses will be to ask the operator to site the mast elsewhere. A dialogue begins, which is a fairly normal process. If something is wrong with any planning application, it is not usually rejected out of hand; a remedy is sought. With masts, that may mean investigating alternative sites. If agreement is reached, the outcome will be an alternative site.

The process can also be reversed. It is quite common for applicants to engage in a dialogue before lodging an application. That is a beneficial process, as it allows the key points to be highlighted and discussed so that an effective solution can be agreed on before the application lands on the officer's desk. Dialogue is all-important. We would seek alternative sites if we felt that there was something wrong with the original proposal. Inevitably, there will be circumstances in which the operator says that the technicalities of the installation are such that it must go in a certain place. Those circumstances can be difficult to deal with, but they are part of our daily diet.

Alan Henderson: Dialogue is important and does take place. In the absence of national planning guidelines, the Lothian structure plan includes a policy that sets out the sorts of issues that we expect operators to address. One of those is the fact that they must consider alternative locations and demonstrate the operational reasons for choosing a particular location. Applications in conservation areas are subject to the non-statutory development control guidelines on telecommunication masts—such guidelines exist on a number of issues. The guidelines include a list of points that we expect operators to consider—for example, the need to negotiate with owners of buildings of less architectural significance if we are concerned about the impact of the equipment on a particular building. Operators would need to consider other locations where the infrastructure could be more easily camouflaged and have less of an impact. Although dialogue is important, it is equally important to set out the ground rules and expectations in advance.

The Convener: First, I want to pursue the issue of conservation areas, where you have changed the scope of the planning system. Has that had a significant effect on telecommunications development in those areas?

Secondly, what are your performance criteria for processing such applications? Are they processed in the same way as other applications, or is the process slower? Telecommunications is an interesting area, because it is a living example of full planning powers.

Alan Henderson: Edinburgh is traditionally the slowest authority in terms of the number of applications that it determines in two months—about half of all types of applications are determined in that period. That is because of the large number of conservation areas involved and the environmental issues that we have to deal with and consult the public on. Our experience is that telecommunications applications have not been handled any more slowly than those for other

types of development. If telecommunications applications take longer than two months, that is because we are discussing a more acceptable alternative location with the applicants. The alternative is that the applicants get their decision quickly, but that that decision is a refusal. We find that they—like other developers and operators—would rather continue negotiation and discussion to find an acceptable solution. There is not a dramatic difference in performance in the way in which such proposals are dealt with.

The Convener: Has that stopped the roll-out of any developments? Is Edinburgh an area in which mobile phones do not work? I suspect that that is not the case.

Alan Henderson: I am sure that the operators would tell us if we were holding up developments. I think that the operators have accepted, in Edinburgh, the environmental constraints of a world heritage site and have been willing to look at alternative solutions. That has been a positive reaction from them.

Brian Kelly: I want to conclude an earlier answer. The Glasgow experience has been that many developments have been moved to alternative locations because of the pressure; equally, a number of applications have been withdrawn for the same reason.

Further to the point that Alan Henderson just made, Glasgow development control committee's performance is monitored, as the performances of all such committees are. Our performance, too, is lower than expected; at the last time of checking, it stood at around 59 per cent, while the Accounts Commission expects us to deal with applications at a hit level of around 80 per cent. We are already under severe pressure. As you know, the committee in Glasgow meets weekly, so it is very resource intensive. If we took new issues such as this on board, the pressures would become worse and, in some respects, other applications would suffer. Indeed, all applications would suffer some sort of punishment and the performance might go down.

David Banford: We seem to be moving the debate towards procedures and performance. At a previous meeting, Mr Nick Greer gave evidence on behalf of one of the operators. He said that the industry liked the concept of permitted development because it created a favourable environment for the operators—an environment that removed them from public debate. He promoted the argument that an adverse environment would be created if the operators had to go through the proper planning process. The reason for his view was that most cases—under the prior notification scheme—would be dealt with under delegated powers, whereas under the planning application system, cases would be moved away from planning officers towards politicians. He saw that as a retrograde step.

What Mr Greer fails to understand is that in the vast majority of Scottish authorities, most applications are dealt with by delegation to planning officers. About 80 per cent of applications to my authority are dealt with by officers at my level. It is only when something goes wrong—where there is a conflict with policy or when somebody lodges an objection—that the application moves to a committee. Once it is in committee, the matter is debated in an open forum.

The industry does not understand properly how planning authorities work and it is high time that it did. I hope that if we engage in dialogue, we can make clear our procedures to the industry. If we had a system that required planning permission for the largest structures, an application would come to the authority in the usual way and officers would examine it. If they were content with that application and there were no objections to it, it would be approved as a delegated item. That would be no different from prior approval; it is only when there is a problem that an application goes before a committee.

11:45

The Convener: Thank you for clarifying that.

Tavish Scott: I note the points that were made about the effectiveness of the current framework, and the number of applications that are approved because they are delegated to officers. I would like to explore the effectiveness of the prior approval system. A number of interesting points were made about that by previous witnesses to the committee, particularly by those from the Royal Town Planning Institute in Scotland.

As an example of a situation in which prior approval may not have worked for agricultural buildings, the RTPI said in its written submission that

"planning authorities . . . are only too well aware that the imposition of improved standards for such buildings at this stage is likely to have little impact on a landscape already extensively blighted by poorly sited and inappropriately designed farm buildings."

Planning authorities presumably seek to maintain and enhance the environment, whatever its current state. Do you think that that is fair comment? Does prior approval fail to work because of the attitude and approach of planning authorities?

David Banford: Generally, that is fair comment. An important element of the prior approval system is that development remains permitted development, so that the planning authority is starting on its back foot in trying to improve

environmental standards. My experience of the prior approval system for agricultural and forestry buildings is that our powers are restricted by development orders. The range of considerations that we can apply is restricted because the legislation says that those structures effectively have outline approval. We are not allowed to challenge the principle of erection of an agricultural building; all that we can do is consider its siting and appearance. With that system our powers are limited by statute. With the planning application system, however, we have a greater ability to seek environmental quality.

Tavish Scott: Therefore, there is a clear precedent in such cases. How does the prior approval system differ from the Executive's telecommunications proposals?

David Banford: I have still to see the Executive's published proposal. If that is constructed in a similar vein, I would expect there still to be a restriction on planning authorities' ability to deal effectively with the environmental consequences of telecommunications proposals. One system is inherently restrictive to planning authorities and the other is not.

Robin Harper (Lothians) (Green): I have questions about the Executive's proposals for telecommunications developments. Can you describe the Executive proposal and what it entails?

David Banford: The Executive proposes a two-tier system—a 28-day period for prior approval for structures on buildings, and a 42-day period for free-standing structures. That reflects the English and Welsh system, which is up and running.

The first stage is an application being lodged with the authority. The authority must then decide whether prior approval is necessary and must investigate the application in sufficient depth to make that judgment. If it is content that there is no problem with the scheme, the usual permitted development provisos will simply take effect.

If the council takes the view that there is a difficulty and, therefore, that prior approval is necessary, the procedure moves to the second stage and an advertisement is published. The Executive is suggesting that neighbour notification should take place. If neighbour notification does not happen, the current situation will be weakened vis-à-vis planning applications.

Phase 2 takes one into the 42-day period. As Bill Hepburn said, if an authority misses that deadline, it is deemed that permission has been granted and the authority loses the opportunity to modify the application. If an authority decides that there is a problem and does not find a proposal acceptable, the application must, presumably, go to committee with the report that sets out why the council finds the application unacceptable. That mirrors exactly what happens with planning applications. A decision by the committee that there should not be prior approval is equivalent to a refusal of planning permission. In difficult cases, therefore, prior approval does not achieve anything that the planning permission procedure could not.

Robin Harper: What about public notification and consultation?

David Banford: I understand that there is no neighbour notification—that is a defect. A public advertisement is required—if members of the public see that advertisement and respond timeously to it they can participate in the debate. If they miss that chance they cannot.

Robin Harper: Can you confirm that there would be one public advertisement?

David Banford: Yes.

Robin Harper: Are there issues about the complexity of the suggested process?

David Banford: There are various types of prior notification system. The system in the proposed legislation is inherently more complex than the comparative simplicity of a planning application. When the existing legislation was drawn up, it was done so in the context of deregulation—allowing industry to do things more quickly and simply—but the statutory structure that has been created to facilitate that is complicated and difficult for practitioners to work with. It is possibly far more complicated for the public to understand. We often have to try to explain why some things need planning permission and others do not, and the public are bemused by our answers. I think that the planning application system is simpler than the prior notification system. If the planning application were used, everybody would know where they stood and we could get on with the business and reach the correct decisions.

Robin Harper: Is the timing for consideration of applications an issue?

David Banford: It is an issue for the prior notification system because if the authority is unable to respond by the deadlines—28 days and 42 days—the applicant has a deemed permission. On day 43, if the authority has not said yes or no, the operator may start to build. That imposes a serious target for the authority.

There are two ways of dealing with that. The first is to ensure that the application is fully assessed and dealt with by that time—if that happens, that is all well and good. If, on the other hand, the authority thinks that there is still something wrong with the proposal but has not been able properly to examine and debate that, the remedy—simply to beat the deadline—is to issue a refusal. That is unhelpful to the development of not just the

telecommunications industry. Developers prefer to be able to resolve an issue without the clock ticking against them. If, for example, 50 days are needed to successfully resolve a case, that is how long should be taken. That will produce a better result.

Mr Tosh: In answering Robin Harper's first question, David referred to the English and Welsh experience. I would like him to expand on that. I would have guessed that even the amount of advertising that is required under prior approval would mean that there will be much greater awareness, more interest and more objections among people on whom the proposal might impact.

Planning authorities might find that, because of the presumption in favour of the application, they must accept proposals that they would—If they had full planning powers—have relocated or redesigned. That would lead to public anger about the process and might bring the planning process into disrepute unfairly. I do not want to lead the witness, but is that a concern of your colleagues south of the border?

David Banford: It is difficult for me to answer that properly. I have no real information about the situation south of the border, although I believe that the evidence given last week by the Royal Town Planning Institute in Scotland touched upon the English and Welsh experience.

On the subject of publicity, I had—in one of my former bailiwicks—personal experience of someone complaining about a proposal. I said to that complainant that the proposal had been advertised and that she should have responded. Her response was that she did not read the papers, which I found remarkable. Neighbour notification would have solved that problem.

Alan Henderson: Members of the public expect not to have to look for an advertisement; they expect to be notified of planning proposals at their home address. As David said, they complain if that does not happen. They also expect that they will be able to make a contribution to the process and that they and the local authority can influence the outcome. I am concerned that, with the prior approval approach, there will be so many limitations on what we can do that we will be unable to achieve an acceptable result in any area.

It seems that the proposals have been written in an attempt to make the process efficient, but the effect has been the opposite. By introducing a new procedure that is different from the everyday procedure that we use in dealing with planning applications, we are putting into the system something that could cause difficulties, misunderstandings and delays.

Mr Tosh: I agree with all of that. It would be pertinent for us to ask—perhaps through local authorities in England—what the experience south of the border has been. Written evidence would do but, as fears have been aroused, it would be responsible of us to find out about those authorities' experience.

Linda Fabiani: Please excuse me for having missed part of your presentation and for any repetition that may arise from that.

How do the operational requirements and costs—in terms of work load, administration, processing and so on—of the prior approval system compare with those of the planning application system?

David Banford: They are almost equal. Bill Hepburn made the point that the fee for the prior approval system is limited to about £33 or £35, which is part of the favourable environment created by the existing legislation. However, officers dealing with the prior approval system are being put through exactly the same work as with the planning application system. To discharge his duty properly and professionally, the officer must receive the application, check it to ensure that it is competent, go to the site to assess it and, possibly, consult colleagues in other departments to ensure that their interests are properly safeguarded. Eventually, some kind of report will be written that confirms whether the proposal is good or bad and gives the reasons for that view. That is exactly the procedure with planning applications.

12:00

Linda Fabiani: Therefore, does the prior approval system save no resources?

David Banford: There is no saving of resources at all—it makes the situation worse, because we get less money for doing the same work.

Des McNulty: You said that there is a charge of £33 or £35 per application. Is there no provision within the legislation to vary that charge? Given that the applications are from commercial operators—which, in this case, are making applications to install masts on a commercial basis—that expect to make a profit, might there be some argument for higher charges, particularly if authorities have to undertake additional checks or gather additional information?

David Banford: Fees are set by Government—it is the duty of the Executive to set planning fees. It would be possible to set a special fee for telecommunications—that is within the gift of the Executive.

Linda Fabiani: We are looking at the difference between planning applications and prior approval.

Is there any difference in the discretion that local authorities have?

David Banford: There must be a difference, as the two concepts are different. With the planning approval system, our ability to influence the outcome is fairly wide. The concept of the prior approval system is that a development that is a permitted development should remain so, unless special considerations apply. The existing prior approval provisions are, to some extent, inherently more restrictive than the planning system, which is open and is a much more transparent and accountable system. Transparency and involvement by the public must be given some weight and significance, and the other systems lack that transparency.

Linda Fabiani: Some local authorities have said that there is apparent reluctance of operators to agree on mast sharing. The Highland Council suggested that prior approval agreements might be problematic in that way. Would a different planning framework help?

David Banford: My experience of mast sharing is that, although the industry says, "Yes, we will mast share", there is a considerable reluctance on the part of operators to do so, for obvious reasons—they like to be masters of their own patch, I suppose. One would need either a carrot or a stick to try to force them into mast-sharing agreements. They will not easily volunteer if such agreements will pose some difficulty for them.

There has been talk of using section 75 legal agreements in the Town and Country Planning (Scotland) Act 1997 to encourage mast sharing, but that would work only if the authority could wave some kind of stick. Usually, a section 75 agreement comes into play only as a device to render acceptable something that may have been unacceptable. If such an incentive does not exist, experience suggests that the industry would not pick up the idea.

Des McNulty: I have a question on charging, although I do not expect a snap answer now. Based on the experience of the different authorities, would it be possible for COSLA to make an assessment of the administrative costs of going through the planning process, such as the costs of investigation and adjudication? It seems probable that even the existing requirements for going through the planning process—which are limited—cost more for the authority to fulfil than the charge that it is allowed to make. If there is a proposal to extend planning requirements to take in a higher number of applications, we should measure the costs that local authorities will incur and argue for a charging system that at least reflects those costs.

Councillor Hamilton: We can get back to you on that.

The Convener: Before we move on, I want to ask about prior approval and neighbour notification. Is that an option for you, or is it not allowed?

David Banford: The current prior notification systems do not allow for neighbour notification, but that is laid down in statute. If the Executive wanted to introduce it as part of the system, it could do so.

Cathy Jamieson: I want to ask about the comparison between prior approval procedures and full planning control. I do not want you to repeat what you have said, only to summarise it and make your views crystal clear.

Operators tell us that they are very concerned about the time taken by local authorities to consider proposals for the siting of telecommunications equipment. How can you ensure that there are no delays in the planning system? What information could be provided in advance? Could there be consultation at the earliest stages?

David Banford: Time delays in the planning system are an old chestnut. Our nominal target for processing applications is two months. In my council, we manage to deal with between 70 and 80 per cent in that time. Ordinarily, the ones that overshoot are the ones that involve some problems and therefore require further investigation and debate.

It would be relatively straightforward for an authority to give special consideration to telecoms installations, if the Executive so desired. That would be for the national planning policy guidelines on telecommunications to emphasise. If a proposal is relatively straightforward, a timeous decision will likely be reached; if it is complicated for some reason, it will probably overshoot. However, a prior approval system would do exactly the same.

Authorities have to organise themselves to allow simple and straightforward cases a fair wind through the system. It is not difficult to do that; it is just a matter of internal administration, allowing the complicated cases to be spotted and dealt with appropriately. The majority of cases are dealt with within the two-month time scale.

As for providing information in advance, we encourage all applicants to engage in a dialogue with us to ensure that the key points for any site proposal are identified and dealt with in advance to enable the application to be processed more quickly. That process has not happened with cases that take a long time. It is important for the industry to recognise that and for the planning authorities to set out their stall, which they would normally do through the development plan system,

so that the industry knows in advance what the tests are and where the sensitivities lie. That would allow a meaningful and effective dialogue, in which everybody would know about the process when the application was lodged. They may know in advance whether the application will go to committee, possibly with a recommendation of refusal, but they will take their chances.

Cathy Jamieson: Taking account of the fact that the pace of change in the telecommunications industry is very quick and that there are likely to be further changes, do you think that there is a danger that full planning control will lack the flexibility needed in future? For example, the NPPGs come out irregularly; structure plans cover 10 years and local plans cover five years, and it takes time to update such processes. Do you foresee any problems with that?

Alan Henderson: I mentioned the structure plan and the guidelines that we operate in Edinburgh. Those, and similar documents produced by other local authorities, are written in the form of guidelines and will not be overtaken by advances in technology. They cover the issues that planning authorities should consider when dealing with an application and the relative weight that should be given to individual considerations. Because they are not concerned with advance identification of specific sites, they can be adapted to take account of changes in technology.

Cathy Jamieson: What are the major advantages and disadvantages of prior approval and full planning control and what are the main differences in the effectiveness of the two approaches? Furthermore, can you summarise the lessons that we can learn from the English and Welsh experience?

David Banford: The planning application system has the advantages of procedural simplicity, transparency and accountability. The other system lacks those qualities because of the way it is constructed.

The Convener: The targets for the planning application process are set by the Accounts Commission. Would full planning control make a difference to your view on higher targets for telecoms?

David Banford: Performance is monitored every six months. If I remember correctly, existing targets are set down in NPPG 1. However, if the Executive told planning authorities that that weight of resource needed to be given to telecoms, we would do that.

Nora Radcliffe: I want to mop up a point about full planning permission before I ask my main questions. Would a further advantage of moving to a system where full planning applications were required—bearing in mind what was said about the speed of development of telecommunications—be that you could give temporary approvals so that installations could be reconsidered in three years or so?

12:15

David Banford: It is possible to grant temporary permissions, if the circumstances warrant it. Dumfries and Galloway Council is looking forward to the approval of its replacement structure plan by the Executive—an early Christmas present, we hope. The telecommunications policy in that plan makes the point that we will consider granting temporary permission in appropriate circumstances, to take account of technology change. That is an option.

Nora Radcliffe: That would be an advantage to be gained from following the planning application route.

David Banford: It would provide another layer of flexibility. The industry has been trying to present the planning application system as inflexible—that is wrong. It is an inherently flexible system, which allows open debate.

Alan Henderson: The City of Edinburgh Council has dealt with satellite dishes for televisions and has given temporary consent for those in particular situations, knowing that cabling was being introduced. That is a similar approach that has worked in the past.

Nora Radcliffe: Would you outline your authorities' key policy issues for considering telecommunications developments?

David Banford: The policy structure plan that is about to be approved by the Executive has been provided for the committee. It says that

"the Council supports and encourages the development of telecommunications facilities and services which assist the local economy or support local communities. Telecommunications developments should be sited, designed and developed in a manner which minimises impact on the environment, by taking into account:—

impact on landscape and environmental interests including Conservation Areas, Listed Buildings and Archaeological Sites;

shared use of existing or proposed telecommunication facilities;

siting radio antennae or other apparatus on existing buildings or structures, and

the availability of alternative sites, taking account of technical and operational considerations."

Those are the considerations that we have written into policy and which we anticipate being approved by the Executive.

Alan Henderson: In Edinburgh, we are part of the Lothian structure plan, which covers a range of

urban and rural authorities. Our policy is designed to minimise environmental impact. It requires information about the operators' requirements, the possibility of alternative locations and environmental factors. However, the key to applying such a policy is that different weight can be given to each of the factors—that is where national planning guidance would be helpful, to allow consistency between local authorities.

Brian Kelly: I remind members that I am not a planner, however I submitted to COSLA a document on planning policy, which outlined the factors that Glasgow City Council takes into account: visual amenity, access and design. We go on to point out that planning legislation has never had to, and never should have to, consider health and safety issues. I suspect that you will return to that issue soon.

Bill Hepburn: My council's policies echo what has been described for Dumfries and Galloway and for Edinburgh. Highland Council is supportive of telecommunications in the Highlands, because it is bringing tangible benefits; for example, the University of the Highlands and Islands will be linked by microwave telecommunications. It is clear that remote, disadvantaged areas will receive some support from improved communications.

The health issue is emerging but, above all, the council wants proper control over it; planning permission would give that.

Nora Radcliffe: My next question is wide and general, and you have answered it partly already, Mr Hepburn. What is the significance of the nature and range of the impact of telecommunications developments?

Bill Hepburn: That is a wide question. As I said earlier, the planning system can deal only with more orthodox planning impacts, such as siting, design, external appearance, means of access and power supply—the tangible side of planning. We may need more guidance on the health issue, because it is less easy to deal with, in both the existing and the proposed systems.

Nora Radcliffe: With regard to amenities, what do you consider to be largely inconsequential? Could certain forms or sizes of developments be treated as permitted developments or as de minimis aspects of telecommunications developments?

Bill Hepburn: I will start off, and let my colleagues join in if they want to.

In my mind and in the minds of the public, additions to existing masts, such as extra microwave dishes, small radio housings in established base stations and additional antennae, have an inconsequential impact on development. One of the silly aspects of the present system is that if you have 10 microwave antennae on an existing mast, you need planning permission for the 11th one. That is a nonsense, because a structure that is big enough to take 10 antennae is fairly sizeable anyway. There is a level of development, from the microcell to the relatively small-scale permitted developments as they are presently framed, that is inconsequential and can continue to be de minimis and permitted development, irrespective of where the health issue takes us.

Nora Radcliffe: Do the rest of the witnesses agree with that?

Brian Kelly: May I make an observation? I was concerned by an earlier comment. There are benefits when different operators share masts, but a question arises from that: who polices mast sharing? Licensing was talked about as a policing measure. However, someone has to measure emissions when new pieces of equipment are added to an existing mast. In addition, a threshold for emissions has to be defined. If that threshold is exceeded, do you take away the 11th installation, or the ninth, or the eighth?

Although I see the benefit of putting additional pieces of equipment on the same mast, the matter is complex. The policing issue—for example, what you measure and what you do if you find the wrong results—becomes a problem further down the line.

The Convener: We will touch on measurements and the issues that you raised, Brian. Microcells will be part of the third phase roll-out. What is your experience of the use of microcells in the urban environment?

Brian Kelly: I have to pass on that question.

David Banford: Small-scale equipment in the urban landscape would continue to be permitted development. It would seem that the forthcoming generation of infrastructure and the microcell concept could rely on physically small equipment. If that is the case, then that type of installation could safely continue to be permitted development. In future, somebody has to write down the parameters for that. However, in giving evidence in support of planning control, it is important to remember that we are not talking in any absolute or global sense. The bigger structures should be subject to planning control, while the obviously minor structures can remain as permitted development.

Nora Radcliffe: This might be a bit of a daft lassie question, but if someone receives planning permission for a big mast, does that imply permission for 20 or 30 little bits of related equipment scattered round it? Is that a sensible option to consider or is it a silly idea?

David Banford: The way that the microcell concept is developing means that there will be a base station of some significance somewhere while, scattered throughout the city or the countryside, depending on what the technology requires, would be very modest installations that would speak up the line to the big site. The big site should have planning permission. However, if the microcell infrastructure itself is on a very small scale—it is just connected by radio wave—it should not be a problem to continue to deal with the main mast on its own merits and allow the wider infrastructure to develop in support of the main site.

Nora Radcliffe: Is there the option of controlling the proliferation of small sub-installations as part of the permission for the major one?

David Banford: That would not need to happen unless it could be demonstrated that that accumulation of lesser equipment was itself causing a problem. If it was, then it would need to be addressed.

Nora Radcliffe: You could approach it that way?

David Banford: Yes.

The Convener: In regard to health and the precautionary principle—I got Bill Hepburn's view on this earlier—should health be considered as a material planning consideration? What would be the reason for your answer?

David Banford: To answer that in a wider context, health is already a material planning consideration for a wide range of planning applications. A planning officer ordinarily will not have a health qualification, so the system requires a consultation to be issued to an appropriate body, typically the HSE, for specific technical advice. That comes back to the planning authority and is put into the balance along with all the other considerations. The concept of health as a material consideration is already established. Bill made the point that there has been at least one if not more court cases in England that have confirmed that, in terms of telecoms developments, health is a material consideration.

The problem arises because we do not have good advice. Not to be disparaging in any way to your other witnesses—for example, the NRPB—but there is no good advice or clear information one way or the other about the weight that an authority should give to the health issue. As a result, an authority is unable to attach any weight to the health issue. So, yes, it is a material consideration, but unfortunately we are unable to address it because of an absence of evidence. That is for another party to address.

12:30

Alan Henderson: The HSE is approached when installations involve hazardous substances. When local authorities receive planning applications within that area of activity, they will consult HSE. It operates a system of zones around the installation and knows what sort of development it would accept within those zones. That has the advantage that the local authority does not have to come to a judgment on the significance of health-related information, as a qualified organisation is doing so, and will tell the local authority what the implications are for land uses. If that were to apply in this situation, as David Banford said, it would be one more factor that we would take into account and it would be based on an organisation's expertise.

Brian Kelly: I suspect that it would cause more problems than it would solve in the current climate. If the planning authority were to ask the HSE or NRPB, the information that it would get back might be unhelpful. I do not think that anyone would dispute that.

If we ask our environmental health colleagues and they in turn ask the local health board for an opinion, that raises the question about who in the health board should respond. Do we ask a cancer specialist or a public health generalist? The committee had evidence from Dr Helene Irvine, who may give a different view from a cancer specialist. How does an authority know which advice it should take?

That places a burden on the local health authority. I do not think that Greater Glasgow Health Board could cope. It would be asking a lot to get an opinion on this type of development and also landfills and other matters. Local authorities would increasingly turn to health boards for that type of advice. They might not like the advice that they get back and they might not get it in the time scale in which they expect it.

Linda Fabiani: David Banford said that health is already a material planning consideration. Are you saying that each of the 32 local authorities could take their own opinion, under planning guidelines for telephone masts, as to whether to allow them?

David Banford: What I was getting at was that none of the authorities would dare to attempt to introduce it.

Linda Fabiani: Do local authorities have the right to introduce it? You said that health is already a material planning consideration.

David Banford: They have the right, but they would not exercise it because they do not have the evidence on which to base any judgment.

Linda Fabiani: Are you saying, then, that national guidelines are required?

David Banford: That is the point that Bill Hepburn emphasised earlier. This is an issue that must be addressed at national level by the Executive. That is where the guidance should come from.

Linda Fabiani: My confusion is that other people have said in their submissions that health should be a material planning consideration. Are you saying that it is one already, but it is not implemented?

David Banford: Basically, yes.

Mr Tosh: This is a revisiting of the questions which I asked earlier that David Hamilton wanted me to direct at Edinburgh and Glasgow.

We are into a further round of consultation. The Scottish Executive has said that, in principle, it is willing to introduce a precautionary principle and to introduce cordons sanitaires. How do local authorities think that should operate? How would you identify and define cordons sanitaires? How do you think they could be defended? How would you treat different buildings and uses? Would you establish an overall cordon sanitaire, or would you apply different standards to residential and other types of property? In practice, how effective would a cordon sanitaire approach be? What practical difficulties could there be? For example, how would you deal with the point that I raised earlier about subsequent planning applications within the cordon sanitaire or a change of use application, which might affect where you would draw the boundary of the cordon sanitaire?

I am suggesting that the Scottish Executive might not drop from on high a set of guidelines, which you could then happily implement. It might ask you to specify what you would like the guidelines to be and ask you to justify that. What advice would you give in those circumstances?

Brian Kelly: As I said, I suspect that it is somewhat late in the day to achieve the remedy that you may be seeking. I do not fault you for doing that. Let me tell you about Glasgow's present situation. I do not question the precautionary principle and I understand the reasons for it.

In the first flush of dealing with this issue, rather than adopting the precautionary principle—I do not know whether I had heard that expression then—we sought all the advice we could from the HSE, the NRPB and others, and bought equipment to measure, within reasonable parameters, what was going on.

I do not say that the equipment is the best in the world, but it allowed me to tell my committee that, measured against what the Government permitted through agencies such as the NRPB, the level of emissions from particular installations was relatively low. A reasonable person could not conclude from such results that a great deal of harm was being caused. I do not want to open up the debate that you have been through with other people.

It would be difficult for a group of politicians to expect an officer who has found that emissions are at levels that are hundreds or thousands of times lower in magnitude than what Government says is permissible to conclude that harm is being caused. We are in an extremely difficult area. The evidence from other experts—you have heard the conflicting views of medical experts—only adds further confusion to the process. I am sorry, but that answer is as complicated as it sounds.

Mr Tosh: So is that a pass?

Brian Kelly: A kind of pass.

The Convener: Are there any other comments from witnesses on the question of a cordon sanitaire?

David Banford: I can only echo what has been said: it would be virtually impossible for a planning authority to make sense of that requirement unless there were clear technical guidelines. Those do not exist at present.

Alan Henderson: It is a difficult question. The planning system works by identifying special areas that have characteristics that need to be protected, and by weighing up conflicting objectives. It is a different approach to say that no activity should take place in certain areas, in which local conditions suggest that activity could take place.

Brian Kelly: Can I add further confusion to this? I understand that planning issues are involved, but there is a theory—I have not checked the science—that if masts are closer to one another, the signals will be weaker. If there is concern about the health impact of the strength of signals, it might be better to have more masts firing weaker signals between them. That might not be a good planning argument, but it might be a good health argument.

Mr Tosh: David Hamilton might be happy to know that Glasgow and Edinburgh have as much knowledge of this as his authority.

Councillor Hamilton: My answer was better.

Mr Tosh: The difficulties that we will have in a number of aspects of our report are shown clearly.

To take a step forward and assume that the Executive—for whatever reason and in whatever way—should provide guidelines that the local authorities could enforce, it is likely that there will be installations that would not have been granted planning permission had it been a requirement. How could the planning process attack those issues? I am not sure whether there are

precedents for reassessing and cancelling the planning consent of something that later comes under a new framework. How would that work in practice? It would be helpful if you would outline the difficulties that would be involved.

Brian Kelly: I could not attempt to answer that as a planner but, in my guise as regulator, I can say that one could impose a standard against which to measure things. If there were breaches of that standard, one could use the available regulatory devices to set them to rights. That is an enforcement, rather than a planning, answer.

Alan Henderson: Planning consents can be revoked but compensation must be paid—that consideration usually ends the discussion.

Mr Tosh: In this case, the compensation would be the cost of identifying, seeking permission for and establishing facilities in a different location?

Alan Henderson: Yes, that is correct. The situation will be easier to tackle if technology has moved on and facilities are redundant to the operator.

Brian Kelly: In Glasgow, it has been pointed out that an authority wishing to go back on a contract might be in breach of that contract if it did not have the appropriate get-out arrangement. Contracts should be examined closely.

Mr Tosh: How would one extinguish a planning consent in the light of new guidelines? Would it require legal action? Is it difficult in practice? Can you give us some examples that would make the consequences of that option intelligible to us?

David Banford: An opening general principle is that it is most unusual for new legislation to act retrospectively. I think that you are suggesting that that is a possible scenario?

Mr Tosh: If cordons sanitaires and the precautionary principle were established, existing facilities that did not meet the new standards would become the focus of political initiatives and intense public concern. In such circumstances, we would want to do something about such facilities, particularly those that were not likely to be overtaken quickly by the new wave of technology. We would want to consider ways of extinguishing existing consents or to set in motion action that would cause them to be relocated or substantially redesigned.

David Banford: If that were the policy environment, there are already instruments in the Town and Country Planning (Scotland) Act 1997 that allow permissions to be revoked. In the real world, the vast majority of sites do not have planning permissions granted by the council; they have been granted through development orders by Parliament. The prickly issue of compensation would certainly be raised if operators were forced to leave sites and establish new ones.

I do not think that parliamentary draftsmen would find it difficult to create the words to make that happen, but the industry would certainly expect compensation. It would be unfair for the requirement to pay compensation to fall on the doorstep of individual planning authorities if it resulted from an Executive initiative. Government would have to be prepared to underwrite such a move.

Bill Hepburn: I agree with David Banford. Perhaps the cost of revocation orders themselves, never mind the cost of physically moving installations, would be significant. On one occasion, the Highland Council granted planning permission and a lease, and later sought through agreement with the applicant to revoke it. The compensation charge worked out as something like £130,000 for a relatively minor installation, which gives you an idea of the magnitude of the task.

Mr Tosh: What was the process for that revocation? If the applicant had not agreed to the revocation on a voluntary-cum-compensation basis, would you have had to go court?

Bill Hepburn: Yes. In this case the applicant was willing to comply and did not even charge the council for all the costs involved. The cost would be substantial if that were repeated throughout the country.

Councillor Hamilton: My answer is somewhat different. If the technology is moving as fast as we lay people believe it is, the 2,000 masts that are now in use will become redundant as new technology takes over. When any changes in legislation come into effect, a line should be drawn to decide how to progress from that point. With the number of masts growing by 20 a month and with a third generation of more sophisticated technology coming in, it may be in the interests of the operator to move on to the new operations rather than looking backwards. The situation may not be as bad as one might think.

I am of the opinion that people move on. For example, the Government has just introduced new opencast regulations. That does not make a difference to what happened before, but the new legislation puts the onus on the company rather than on the council, as used to be the case. We have taken those regulations on board and an operation that would have been permitted last year may not be permitted this year. The picture may not be as gloomy as it appears.

12:45

Des McNulty: I understand the complex issues involved in revoking planning consent. However,

as Brian Kelly said, there must be a number of cases in which new regulatory frameworks have been imposed on operators of all kinds of public utilities and private provisions. Those can be emissions-based regulations or location regulations. If that is the mechanism for dealing with out-of-compliance operators, there seems to be no basis for compensation. The onus of complying with standards rests with the operators, so the best method of dealing with problems may be licensing or enforcement, rather than revocation of planning consent. That also takes account of the fact that the majority of installations do not have planning consent anyway.

The Convener: Before we come to the final question, I think that Murray Tosh wants to say something.

Mr Tosh: There are still two questions that I want to ask.

The Convener: I am aware that time is limited.

Mr Tosh: I just want to mention something that was thrown up by the industry representatives. They felt that their environmental requirements were effectively being met through their licensing obligations. I wonder whether, as planners, you feel that that is genuinely the case. How do you feel about the fact that the telecommunications licensing system effectively regulates environmental considerations?

David Banford: The licensing system's ability to police sites is shrouded in quite a fog. At my level, as a development control practitioner, it is difficult to see its effect in practice. We still find situations in which structures arrive on site causing great public upset and the operator does not seem terribly bothered about it. To the operator, a new site means new customers, so it must be good.

It is difficult for me or for the public to see any enforcement of the licensing system in operation. I do not know who would be able to enforce it—someone from the Department of Trade and Industry, I suppose. However, I have no knowledge of its ever happening in practice.

The Convener: Are there any other comments?

Bill Hepburn: I read the evidence of the industry. Nick Greer of Vodafone expressed the view that planning permission would not enable planning authorities to do a better job. I thoroughly disagree with that view and I am sure that, were he to consider the position carefully, he would do so too, because he has accepted that the prior notification procedure is an improvement.

The licence clearly does not take in all the material considerations that a community might have. It sets parameters for an operator, which he must meet under the terms of that licence, and I do not doubt the spirit in which the operators are trying to do that, and I have no complaints about their work, particularly in the Highlands. However, I believe that a proper planning appraisal system would improve matters on the ground.

The Convener: Those are issues that we will want to follow up. Our final question comes from Helen Eadie.

Helen Eadie: Previous witnesses have suggested that there are deficiencies in the enforcement of environmental safeguards in the licences. What do you consider to be the main consequences of those deficiencies? Who should be responsible for enforcement and what is the role of local authorities?

Brian Kelly: I am concerned by the fact that masts are live almost all the time. People are employed to tinker with them and repair them, and those are the people who will be exposed to large doses of radiation. I am not attacking or criticising the Health and Safety Executive, but it falls to that regulatory body to take on board that sort of issue. I would like to know whether there is any evidence about the level of radiation exposure experienced by people who maintain and repair telecommunications masts, and the health effects. It is a relatively new industry and we are still learning, but I am not convinced that there is adequate protection against the conditions in which some people are working.

The Convener: There are no more questions from members of the committee. I therefore thank all the witnesses for putting up with us this morning. It is a difficult subject area for all of us, but the insights that you have given us into the practical, on-the-ground issues, as well as the policy issues, have been useful in our investigation of the matter. On behalf of the committee, I thank you most sincerely for your contributions. We will certainly be writing to you to clarify some of the matters that have arisen.

That brings us to the end of the meeting. I thank members for their attendance, and I also thank the people in the public gallery for their interest in our proceedings.

Meeting closed at 12:52.

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ISBN 0 338 000003 ISSN 1467-0178