

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 12 September 2001
(Morning)

Session 1

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CONTENTS

Wednesday 12 September 2001

Col.

ITEMS IN PRIVATE.....	2009
INTERESTS	2010
“REVIEW OF STRATEGIC PLANNING”	2011
TELECOMMUNICATIONS DEVELOPMENTS	2032

TRANSPORT AND THE ENVIRONMENT COMMITTEE

21st Meeting 2001, Session 1

CONVENER

*Mr Andy Kerr (East Kilbride) (Lab)

DEPUTY CONVENER

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

COMMITTEE MEMBERS

*Robin Harper (Lothians) (Green)

*Mr Adam Ingram (South of Scotland) (SNP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Fiona McLeod (West of Scotland) (SNP)

*Des McNulty (Clydebank and Milngavie) (Lab)

*Bristow Muldoon (Livingston) (Lab)

*John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Murray Tosh (South of Scotland) (Con)

WITNESSES

Nick Evans (Scottish Executive Development Department)

John Gunstone (Scottish Executive Development Department)

Lewis Macdonald (Deputy Minister for Transport and Planning)

Jim Mackinnon (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Shelagh McKinlay

SENIOR ASSISTANT CLERK

Tracey Haw e

ASSISTANT CLERK

Alastair Macfie

LOCATION

Committee Room 2

Scottish Parliament

Transport and the Environment Committee

Wednesday 12 September 2001

(Morning)

[THE CONVENER *opened the meeting in private at 10:04*]

10:30

Meeting continued in public.

The Convener (Mr Andy Kerr): I welcome the press, public and committee members to the meeting.

It would be remiss of me not to refer to yesterday's tragic and shocking events. Members meet with heavy hearts. Our concern will be expressed in the chamber this afternoon, as business has been rearranged. The events put our work into context. Our thoughts and sympathies lie with all those who are involved and their families. However, we have agreed to go ahead with the meeting and we welcome the Deputy Minister for Transport and Planning and his officials.

We have received apologies from John Farquhar Munro.

Items in Private

The Convener: Agenda item 2 is consideration of whether to take agenda items 6 and 7 in private. Item 6 is consideration of the committee's draft annual report, which will be published around October. It is usual for draft reports to be considered in private until the committee agrees their contents. Item 7 is consideration of contract arrangements for our adviser on the water inquiry. It would be appropriate to take the item in private as it relates to the terms and conditions of the adviser's appointment.

Do members agree to take items 6 and 7 in private?

Members *indicated agreement.*

Interests

The Convener: I welcome Adam Ingram, who is a new committee member. I want to record in the *Official Report* my appreciation of his colleague, Bruce Crawford, who served on the committee before him. Bruce was a vibrant, useful and constructive committee member.

I invite Adam Ingram formally to declare any interests that he thinks are appropriate to the committee's work.

Mr Adam Ingram (South of Scotland) (SNP): I have no interests to declare. I thank the convener for his welcome. I hope that I can fill Bruce Crawford's boots.

The Convener: I am sure that you will.

“Review of Strategic Planning”

The Convener: Agenda item 3 is the Scottish Executive’s “Review of Strategic Planning”. I welcome the Deputy Minister for Transport and Planning, Lewis Macdonald. He is accompanied by Jim Mackinnon, the Scottish Executive’s chief planner, and John Gunstone, head of branch 1 of the Scottish Executive development department planning division.

The minister may wish to say a few introductory words. I understand that Jim Mackinnon will deliver a substantial presentation on the review and that we will then be able to ask questions.

The Deputy Minister for Transport and Planning (Lewis Macdonald): Thank you, convener. I echo your opening comments on yesterday’s events. We share those thoughts and sympathies.

As you said, I will ask Jim Mackinnon to make a presentation on the details of our strategic planning review, but it is worth setting in context how the review came to be under way.

Members will be aware of the document that was issued in January 1999 immediately prior to devolution. The Scottish Office issued a consultation paper on land use planning under a Scottish Parliament to lay the way for planning under devolution. It did not put forward specific proposals, but posed some general questions and attracted a significant number of responses—around 130. There was little consensus on the way ahead, but there was a general view that the planning system as a whole worked well, although some components needed to work better.

On that basis, Sarah Boyack, in her first stint as the minister with responsibility for planning, announced a programme of work in November 1999. She also announced that we would listen to worked-up proposals for change. We received many comments from the profession and from elsewhere providing ideas but not detailed proposals.

In November, when Sam Galbraith became the minister with responsibility for planning, he quickly made an announcement about the review of strategic planning, which was the logical development of what had gone before. In announcing the Executive’s intention to undertake a review, he made clear the fact that the status quo would not be an option everywhere and that the Executive would want to address important and difficult issues, such as who should prepare development plans.

The committee expressed an interest in the review from those early stages, so I was delighted to be able to invite members to attend the seminar

in May, which was one of the key points in the pre-consultation stage. As well as consulting the committee, we have consulted planners, business and environmental interests and others who we anticipated would have a view. The review was launched in June, at the Royal Town Planning Institute’s UK conference in Glasgow, at which I spoke. At that time, we received a clear message that the way in which we had involved people and consulted during the early stages had been encouraging.

The review will have some controversial aspects, which we will probably discuss following Jim Mackinnon’s presentation. Nonetheless, there is a general view that a radical review of strategic planning was appropriate and that the proposals that we have implemented have laid the basis for such a review.

I invite Jim Mackinnon to present the review in detail.

Jim Mackinnon (Scottish Executive Development Department): This morning, I shall do three things: first, I shall record the strengths and weaknesses of the current system; secondly, I shall identify the issues that arose in the discussions that we had with a wide range of interest groups, to which Mr Macdonald referred; thirdly, I shall outline our proposals for change—and the committee should remember that they are just proposals in a consultation document.

Scotland has a long and proud tradition of regional planning, from the great Clyde valley plan of the late 1940s, through the programme for development and growth in central Scotland in the 1960s and the great studies of the 1970s, to the structural plans. However, there is a feeling that we have fallen behind in the theory and practice of regional planning. If there were a world cup of planning, we might not qualify for the finals.

When we approached the work, we were keen not to throw the baby out with the bath water. The planning system has many strengths, which we wanted to identify so that they could provide the basis for developing our thinking. It emerged that there was widespread support for the establishment of a statutory basis for the planning system. A statutory basis was regarded as important in providing a degree of confidence and appropriate, as the planning system affects people’s properties.

People believed that ministerial approval of structure plans would enhance the plans’ status. Because we are able to separate strategic plans from local plans, ministers are disengaged from detailed local decisions, although the planning system has had a long-standing involvement in such decisions and there have been opportunities for public involvement. People can relate to

strategic planning in some areas, for example Ayrshire—although not others—but they find it difficult to relate to some of the issues.

There are weaknesses in the system, such as delays. It can take four to five years to approve a local plan and the plans are not always up to date. For example, a structure plan for Lothian region was submitted in 1994, based on a housing land audit from 1992, yet the project is scheduled to run until 2006, in spite of the fact that the area is the fastest growing area for development in Scotland. As a result, there is a feeling that plans are not sufficiently responsive to development—that they react rather than lead.

The development industry says that there is inadequate provision for development. Members might say, “They would say that, wouldn’t they?” but there are examples of places where inadequate provision may be the case. Land supply here seems quite tight, with a firm green belt, and some of the sites that are perceived to be available for development in the west of Scotland have substantial difficulties. There is also a feeling that plans are insufficiently clear about what will and will not be allowed and that there is a tenuous relationship between the strategy and what it will mean for the man in the street.

First, we had to address issues arising from the series of national planning policy guidelines. People liked the robustness of those documents, which ensured, for example, a consistent approach to aspects of retailing such as out-of-town shopping. They also liked our new transparent procedures for preparing NPPGs.

There were concerns about the extent to which development plans followed through on or added to the guidance. Because of a lack of clarity on the matter, people also felt that a context document on Scotland’s place was required to sit alongside the framework for economic development in Scotland and the social justice action plan. We felt that any talk about a central belt strategy would simply degenerate into a discussion about Edinburgh and Glasgow and ignore the wider issues about development in Scotland. If people started to perceive that the Parliament and the Executive were concerned only with the cities, what kind of message would the preparation of a central belt strategy send out?

That leads me on to the rural dimension. Because development is small-scale and incremental in most of rural Scotland, the question was whether the two tiers of a development plan—a structure plan and a local plan—were really required. Many elected members in local communities were a bit confused by the two-tiered approach, particularly when so many stages were involved.

Although people welcomed the involvement of Scottish ministers, concerns remained. First, people felt that the process took too long; for example, approving a structure plan might take up to a year. There were also question marks about the transparency of the procedures and the added value offered by the system. We have become involved in making quite minor modifications to structure plans, partly because the plans have been read more and more as conveyancing documents instead of as statements of vision and strategy.

Concerns about increasing legal scrutiny of plans came through strongly in our discussions. The committee is probably familiar with the human rights issues that are currently bound up with planning. In a House of Lords judgment, Lord Hoffmann said that the Human Rights Act 1998 was meant to strengthen the rule of law, not to introduce rule by lawyers. People are concerned that there is too much detailed legal scrutiny of plans and that debates about vision and strategy increasingly take place in courtrooms. Local communities are intimidated by the presence of lawyers and see the situation as a refusal to allow their engagement in the process; it also lengthens the process.

People also feel that there is consultation overload at many stages of the planning process and are fairly uncertain about the links with other plans and strategies. The purpose of the plan is to set a long-term direction for development, growth and conservation. Other plans can nest within it.

Finally, people are concerned about the content of plans and the advent of criteria-based policies. Such policies mean that, instead of allowing housing to be built wherever, decision makers stipulate that applications for housing in the countryside will be considered against certain criteria. The applicant has no indication of how the decision makers will act.

As a result of all those concerns, we drew up a number of key principles, two of which I will mention. The first relates to diversity. We must recognise that, as there is tremendous variety in Scotland’s geography, a one-size-fits-all approach is inappropriate. Secondly, it is important that plans focus only on what they can deliver, although they should also take account of other factors.

After considering the matter from a national perspective, we propose that the documents should simply be termed policy instead of national planning policy guidelines. Development plans do not need to accept national policy, but if councils seek to develop or alter policy through their plans, they should say so instead of slightly adjusting the wording and making it uncertain whether they accept national policy. Perhaps that requires us to

separate analysis more clearly from policy. That said, we are absolutely committed to maintaining our transparent and inclusive approach to the production of national guidelines.

I have mentioned a context document that might examine how Scotland as a place might develop. The quotation on the slide is from a firm of consultants that advised one of the devolved Administrations. Of course, it is just blether, and is not the sort of route that we want to go down. The next slide shows its graphic equivalent, which I am afraid is no more than high-class graffiti masquerading as analysis.

It is easy to lampoon some of the diagrams, but important thinking underlies them. The Danish diagram, for example, examines the future development pattern in Denmark. The intention was to examine the impact on Copenhagen and the rest of Denmark of boundaries in the east coming down. The result was the Øresund bridge link between Copenhagen and Malmö, which has huge implications at local, regional, national and international levels.

10:45

Closer to home, colleagues in Ireland have embarked on a spatial strategy. The situation in Ireland is different from the situation here. It is expected that Ireland will have one million more people by 2020. Eighty per cent of that population growth is likely to be in Dublin. That is incredible growth. There are huge disparities between the level of development in Dublin and that in the rest of Ireland and the Irish Government is concerned that those disparities will grow. However, it also wants to promote Dublin as a European city, although it is small in European terms. There are huge tensions in Irish development plans and big issues about what market economy levers there are for directing development to one area as opposed to another.

We are keen to have something distinctively Scottish in our strategic plan that reflects Scottish circumstances and the institutional landscape of Scotland and examines how Scotland might develop sustainably over the next 20 years. Such a plan would investigate issues ranging from settlement patterns to population and household change, in which there are dramatic variations within Scotland—for example, between east and west. Then we would begin to assess strategic priorities for transport and other infrastructure investment that could, for example, include telecommunications, which Mr Macdonald will talk about shortly.

We recognise that there are strategic places in Scotland that are important to the national interest—for example, the west side of Edinburgh,

which is experiencing unprecedented development pressures. One of its main assets is its accessibility, but there are concerns about the implications of development at Edinburgh Park and of growth at Edinburgh airport. We are beginning, perhaps, to identify areas where we might have to consider a co-ordinated approach to planning, development and infrastructure.

The east side of Glasgow is another strategic Scottish location, because the M74 will extend to there. An east end regeneration route is, I think, also being discussed. The M74 extension will alter the geography of Scotland. The east side of Glasgow may have been inaccessible, but it will become hugely accessible. The area has concentrations of poverty and vacant and derelict land. We need to make arrangements now to deliver the sustainable development of the area.

Scotland's rural areas are also undergoing tremendous change. We should perhaps think about the spatial consequences of change in the rural economy.

We have thrown those ideas out for discussion. They concern the content of a national planning framework and the process involved. However, we are trying to create not a national plan, blueprint or end-state document, but a framework. We feel that MSPs should be involved in the discussion, either through the work of the Transport and the Environment Committee or through a wider debate in Parliament.

I mentioned the involvement of lawyers and the perception that sometimes policy has been re-invented by the 32 local councils in Scotland and by 200 or 300 local plans. Minor differences in the wording of policies are amplified and people get into tremendous debate at inquiries.

We feel that we could take a limited number of subjects, such as policies on the green belt or on natural or built heritage, and work with local authorities and others to devise model policies that could be incorporated in development plans. The result would be a consistent approach throughout Scotland that would not undermine the right of councils to develop their own policies on issues such as housing in the countryside or design that reflects local circumstances.

I come now to the statutory system. We propose that structure plans should not have to cover all of Scotland and that we should concentrate on the four city regions, which are the four largest cities in Scotland and their hinterlands. We have not specified the composition of those areas, but we have sought views. We envisage the establishment of joint committees similar to those in the west of Scotland, with a dedicated team to take the work forward. They would not try to corral everything within the plan, but would focus on a

limited range of issues: employment, housing and transport.

The environment is key to such plans. Important environmental issues, such as natural heritage, flooding and protection of the coast, would have to be incorporated in the structure plan, which would provide policies to ensure the conservation or enhancement of environmental resources.

We are keen that the plans become site-specific. In the old days, structure plans were drawn up by regional councils. They are now drawn up by people working together, so we know where the sites are. There is merit in engaging people in the debate, in providing a higher degree of certainty and in specifying at strategic level sites that will be available for development—not the small sites, but the big, chunky areas of development.

We want the plans to be action oriented. If land is to be released for development or is to be a priority area for conservation, we want to know what we can expect to happen in the next year or two, what land acquisition needs to take place and what decontamination work or infrastructure is required. To respond to concerns about the examination process, we would make a public examination mandatory. Rather than taking the form of an adversarial inquiry, it would be a discussion moderated by a reporter. Rather than approving plans, as we do at the moment, we would seek to issue a certificate of conformity with national policy. That way, we could turn plans round in a matter of months, rather than in a period of up to a year.

The key point is what constitutes a strategic issue. Throughout Scotland, there are lots of issues that are controversial, but that does not make them strategic; it is a question of scale and of cross-boundary issues. For example, Dundee is expected to lose 18,000 people by 2016 and there are proposals for greenfield developments of 4,000 houses around Dundee, which represents housing for 10,000 to 12,000 people. Dundee has done some impressive regeneration work, but there is concern that that could be undermined by greenfield land releases around the city. That is the sort of key issue that we use to define areas for strategic development plans.

Some areas are uncomfortable with such definitions. For example, colleagues in Ayrshire are unhappy that Ayrshire has not been included, because the area has a good track record in drawing up structure plans. However, there are relatively few issues that cross boundaries in Ayrshire. The housing market areas are much more local. Ardrossan, Saltcoats and Stevenston form one housing market area, with Patna and Delmellington, and Ayr and Troon, forming separate housing market areas. Relatively few issues cross boundaries. Ninety-six per cent of

retail expenditure in Ayrshire is contained within Ayrshire and 88 per cent of that is contained within local catchment areas. People in Kilmarnock shop in Kilmarnock and people in Ayr shop in Ayr. I know that colleagues in Ayrshire are unhappy about our definition of what is strategic, but we feel that it is to do with scale and with cross-boundary issues.

Outwith the cities, there will be single-tier development plans. That will not mean that the documents cannot have a strategic statement at the beginning, as the plan for Inverness and the inner Moray firth has. We would ask local authorities to draw up a scheme for how they would prepare development plans in their areas. The approval process would be much like the approval process for strategic development plans, but the local plans would concentrate on the small-scale sites and on key development control policies. Again, we want those plans to be action oriented, and we will be looking for greater use of supplementary guidance. We are looking not for things that have to go through the panoply of statutory procedures, but for documents that involve the public and which take a lighter touch. Policies on hot food shops or on design, for example, could then be implemented more quickly.

There are some specialist issues. For example, there is a 1999 national planning guideline on opencast coal and we now have up-to-date coverage of structure plan policies. Views on opencasting remain polarised—the industry says that the regime in Scotland is too tough but local communities feel quite the reverse. We feel that there is no point in reopening the debate in the short term, but we will consider it again in the medium term. Aggregates are another important issue. Research into the industry is under way and will inform what we do in future.

Waste is another big issue. There is great concern about the relationship between structure plans, local plans and area waste strategies. We propose that area waste strategies should be prepared and that underlying subject plans should then be developed. The area waste strategy should indicate what facilities are required. It should then be the job of the development plan, which would be a statutory plan, to identify how those facilities will be delivered.

The Convener: Thank you for that useful presentation to kick off our discussions.

I welcome Murray Tosh to the meeting. He is a former member of the committee and retains an interest in our work, so I am happy that he has come along today.

Bristow Muldoon (Livingston) (Lab): Thank you for the presentation, which was

comprehensive and took us through the issue. I wish to ask about structure plans that are prepared by local authorities in consultation with communities and other interested bodies, and which are subsequently modified by ministers. Concerns have been expressed to me about a lack of transparency in that part of the process. Concern has also been expressed that ministers have not conducted rigorous consultation on changes that are to be implemented. How do you respond to that? How do you expect the new system to address those concerns?

Lewis Macdonald: We are examining some fundamental changes in the relationship between the strategic plans as prepared by local authorities, and how we deal with them from the ministerial point of view. There are two fundamental changes. First, we would no longer require to approve in the way we do at present the detailed content of the structure plan. Instead, we would need to confirm that the strategic plan conformed with national policy. That is a slightly different process, because there are, on a range of matters, national planning policies that we would not expect every strategic plan to mirror faithfully. However, we would expect them to conform in broad terms. In other words, we would modify how we related to plans as they came forward.

Secondly, a difficulty of late with a number of structure plans has been that the panoply of examination in public by Scottish ministers has, in effect, fallen into disuse. That is partly because such examinations tended to become legal adversarial events. If I am not mistaken, it is 18 years since there was an examination in public. We have ceased to have those examinations because of what they tended to become. Instead, we are considering a public process for automatic examination—but not by ministers, as such—of plans as they come forward.

The Convener: I have a supplementary question. Jim Mackinnon talked about a more casual approach to the examination of plans that avoids strippit-breet lawyers earning two grand a day and the community standing up against them with the information that they have gained from a website or elsewhere. How would an informal approach prevent that from happening? Will not people turn up in a different guise and contribute to the process and act on behalf of the interests that they have always acted on behalf of? How would your approach take the tension out of that relationship, and how would it balance the power?

Lewis Macdonald: It is a serious challenge to find a way in which to do that. It might partly be achieved by the way the reporters whom we appoint conduct the process. Fundamental to the change that we are trying to achieve will be a change in the directions that we give to

moderators of discussions, so that they are moderators of discussions, rather than the referees of stand-up fights, which is what they tend often to be. We recognise that merely changing the directions to reporters will not break years of habit, but it will be an important starting point that recognises the kind of problems that the convener describes and the changes that we must make. The way we proceed will be informed by experience.

The Convener: On the same point, I call Adam Ingram, followed by Murray Tosh.

Mr Ingram: My question is not on that point.

The Convener: We will hear Murray Tosh first.

Mr Murray Tosh (South of Scotland) (Con): I wish to address the role of ministers in approving plans. One of the strengths of the existing system is that once a plan has been through the ministerial process and it has been modified and issued, councils know that they are likely to be supported in the decisions that they take. The development industry also knows the probable outcome of applications. If ministers stand back to the degree that it appears is intended, will that mean that local authorities will be less certain about the outcome of some of the most difficult planning applications? Is there a risk that you might destabilise some of what works in the system?

Lewis Macdonald: That is certainly not the intention. Jim Mackinnon will comment on the way in which we have tried to address that.

Jim Mackinnon: The situation is not at all as Mr Tosh suggests. The law is that decisions shall be taken in line with the development plan, unless material considerations indicate otherwise. We are not proposing any changes to that fundamental principle. Local authorities will have to take the statutory development plan into account very carefully.

We are trying to ensure that there is a more open process, as Mr Macdonald described, through a public examination that gives greater legitimacy to plans. That would mean that we were endorsing plans as being in line with national policy. It is difficult to generalise from specific cases. The status of the development plan would not be undermined by the changes that we will introduce.

11:00

Lewis Macdonald: The other side is that we expect that some of the proposals that we have for the future nature of the plan will address some of the uncertainties in the current system, because part of the intention is that the plans will be more site-specific.

One of our fundamental concerns about the current system is that the structure plan can indicate, for example, an area of search for a new housing development. At that stage, there is an argument about whether the site is appropriate. Thereafter, when we come to the local plan, we have that argument again. When we come to the planning application, we might have the argument for a third time. If we can telescope that process—not remove anybody's rights to provide input, but have the debate about the sites at the first stage—we can remove some of the uncertainty that follows from the current system.

Robin Harper (Lothians) (Green): I attended a community council on Monday and listened to its problems. Mr Mackinnon talked about structure plans and “big, chunky” bits. In the case of the periphery of Edinburgh, a lot of damage can be done by small areas of development, such as permission for a housing development where once there was an office block or a small factory that provided local jobs. If such land is rescheduled from providing jobs to providing housing, we compound some of the problems that are beginning to build up on the roads into Edinburgh. How would the system that you are talking about address such serious problems?

I will also talk about Currie. The main road in Currie clogs up more as housing is built on either side of it. If there are no local jobs that people can walk or cycle to, the problem gets bigger and bigger.

Lewis Macdonald: Part of our plan is to streamline the process and to try to reach a position in which we no longer have plans that are out of date, or which take a long time to feed through the system in, for example, rural west Edinburgh. We are trying to avoid that difficulty by removing unnecessary stages from the process.

West Edinburgh is a good example, because it is an area of rapid change, as Jim Mackinnon described. To try to ensure that the plans there remain up to date, we would consider a two-yearly review, to which the action plans that had been laid out at the beginning would be subject. For communities and developers, that would provide a degree of certainty that would reflect change in areas that are changing as rapidly, such as Currie.

Mr Ingram: I was interested that, at the outset of your presentation, you made the point clearly that we are not discussing a national plan. In spite of the “European Spatial Development Perspective” and the moves that other countries are making towards such national plans, we are not going down that route, which was advocated in “Pathfinders to the Parliament”.

Why are we not going down that route? Scotland is a relatively small country. Is not it sensible to

consider development of land use in a national context when one or two major projects, such as nuclear power stations, are coming forward? Why are we not considering a national plan?

Lewis Macdonald: We recognise the appropriateness of a national framework document, but it should be kept at the national level. We regard as right the fundamental principle that local planning decisions should be taken at as local a level as possible. That is part of the argument. I ask Jim Mackinnon—if he will assure us that he will not decry any of our European friends and allies—to expand on the arguments against some of the models that have been used elsewhere.

Jim Mackinnon: Mr Ingram mentioned the “European Spatial Development Perspective”. The line that we have always taken on that, in line with other member states of the European Union, is that it is a perspective and therefore not prescriptive. The idea of a national plan implies a degree of prescription that is perhaps unwarranted, given the difficulties of looking to the longer term. We recognise that there is some merit in considering Scotland as a place and in considering how it is likely to develop during the next 20 years.

Mr Ingram was right—a number of member states have national planning frameworks. For example, in Ireland it is called the national spatial strategy and in Denmark it is called Denmark 2020. Most of the frameworks of which I am aware do not use the word plan, because that word implies a degree of control from the centre that we do not want to encourage. Many western European countries, as Mr Ingram said, regard the framework documents as a useful instrument of governance. Colleagues who deal with European structural funds can see the value of that sort of document in dealing with negotiations with Brussels on the future of the structural funds. The frameworks have other potential benefits.

The difference between a plan and a framework is a matter of emphasis. The idea is to consider Scotland as a place and how it might be developed. We can then examine what key infrastructural projects might be required to deliver those developments in the next 20 years.

Mr Ingram: I assume that the framework is designed to fit in with the economic development framework, which follows logically.

Jim Mackinnon: Yes.

Lewis Macdonald: Absolutely. The framework for economic development in Scotland has been a sister document in some ways to the development of the review of strategic planning; we recognise the economic framework's relevance. We should try to keep planning decisions as local as we can

but, subject to that, we are open to discussion about what the nature of the framework document should be and what should be in or out. The framework will be Scotland-wide, so input from the Scottish Parliament will be relevant.

Mr Ingram: Would the framework contain national strategic objectives? Do the other frameworks that we talked about contain national strategic objectives that we are working towards?

Jim Mackinnon: That is the intention. If we began work on a national planning framework, we would have to be clear at the outset what that framework was trying to achieve, and what it was not trying to achieve. Therefore, setting objectives is important.

The Convener: I remind members who have pagers or mobile phones that there is—as they can probably gather—sensitive sound equipment in the room.

John Scott (Ayr) (Con): Notwithstanding the minister's comments about consultation fatigue, will the new guidelines do something to address the huge number of petitions that have come to the committee and in which, by and large, the public seem to feel that they are not adequately consulted?

Lewis Macdonald: Are you interested in some of the policy areas that we have described as separate challenges, or were you concerned with issues across the board?

John Scott: My question was general.

Lewis Macdonald: In general, it is important that the review of strategic planning is part of a continuing review. The review might not be the ideal place to address some of the issues of community participation, but we are alive to those issues. As a parallel process, we will be introducing proposals later this year that will lead to a consultation on how to improve public participation in the system at every level, but in particular at community level.

Jim Mackinnon mentioned some of the big issues such as opencast coal mining and I know that the committee has received a couple of petitions on that. As has been described, those are national issues and a national examination of them will be required. National planning policies are in place and the usual ways for communities to comment on them will continue.

John Scott: The system does not seem to be adequate at the moment, given the number of petitions that are coming in.

Lewis Macdonald: That is part of the reason why we are considering participation. However, no matter how modernised, streamlined and effective the planning system is, one will sometimes be

faced with the challenge of squaring circles and finding the best solutions when different priorities and different national policies are not 100 per cent in agreement. The Executive is keen to remain committed to the principle that, as far as possible, such decisions should be taken at as local a level as possible.

Maureen Macmillan (Highlands and Islands) (Lab): I want to talk about the rural dimension and about how—in, for example, Highland Council's area, which is vast—the strategic statement will fit with local plans. I was chair of a community council for several years and planning was ever the most contentious issue that cropped up. No one ever seemed to adhere to the local plan; councillors and officials disagreed about where developments should be and no one knew exactly which way things would jump. Recently, several high-profile applications for landfill sites have been made, which the whole community gets up in arms about. The way in which we go about planning seems to be wrong.

There has, in the past, been a certain lack of flexibility. In one famous case, plans said that no one was allowed to build a house in a certain area unless the person was a farmer's child who was still working on the father's farm and who was now married and needed a house. It was then discovered that people in that position could not get a mortgage because they would not be able to sell the house to somebody who was not a farmer's child working on the father's farm. All sorts of anomalies creep into plans, which can become nonsense.

I notice that local people are now being consulted about what they want, but how will all the various interests be weighted? How much weight will the views of local people have when those views are set against the views of officialdom—the professional planners and elected representatives, who sometimes do not represent terribly well the people whom they are supposed to represent?

Lewis Macdonald: As did John Scott's question, Maureen Macmillan's raises wider issues on how we can make the planning system more effective in reflecting community concerns and development needs. The particular development needs in the Highlands and Islands are well recognised.

The strategic planning review reduces the burden on planning departments in terms of the preparation of development plans. I hope that that will be helpful. In some cases, it might assist in sharpening the focus on the plans that are required. On the Highlands, a consultation might reveal a general view that strategic planning should be confined to the four larger cities and not to the fifth city—Inverness. In that case, the

requirement for a structure plan in the Highlands would be removed, which might allow Highland Council, as the planning authority, to focus more on the coherence of local development plans and on introducing local development plans that met some of the concerns that Maureen Macmillan mentioned.

The weighting of views and interests in the planning process is subject to continuing review, but responsibility for it lies with the planning authority. The Executive's role is to create a framework within which planning authorities can carry out that task, and to create a policy framework through the national planning policy. As Jim Mackinnon suggested, part of the intention of redefining certain issues as policy—rather than merely as policy guidelines—is to make the different roles clearer and to help local authorities to deal with issues appropriately.

Mr Tosh: The review makes it clear that ministers do not think that the specialist issues—waste and minerals issues—are appropriately handled by the strategic development plans in the city regions or the local plans outwith those areas. I could not work out from the documentation who will do the essential planning for waste and minerals. Who will zone land for landfill sites or for recycling and reprocessing facilities such as incinerators? Who will do the development control when planning applications are made?

On minerals, who will be responsible for the search in the broad areas that are designated for opencast coal mining? Who will recommend that work on sites should go ahead? Who will do the development control work when applications are lodged? That was not clear from the consultation paper.

11:15

Jim Mackinnon: Those comments are helpful. I have heard such comments from other sources too. The basic idea is that local councils will be responsible for preparing subject plans on waste and—possibly—minerals, although we have not reached a view on that. Councils would take decisions on planning applications and would be responsible for beginning to target areas of search. They would be in the lead, but as Maureen Macmillan said, waste disposal sites are not terribly popular with local communities.

On dealing with waste through the area waste strategy, we could say, "We've done waste minimisation and waste recycling, but what are the consequences of the proportion of waste that cannot be dealt with in that way in the short to medium term?" If there is no capacity in landfill sites, how will we deal with that? We cannot leave stuff to pile up on the streets.

Planning authorities have a clear task and the firm intention is that control over that task should rest with them. One reason why we suggested that opencast coal mining should come out of strategic development plans is that it is a specialist subject that raises emotive issues. A debate could be sought on the development of the greater Edinburgh area, but that debate might instead focus on concerns about opencast coal mining. We felt that the issues were sufficiently distinctive to merit separate treatment. There is no question but that local authorities would take decisions on such cases.

Mr Tosh: That is reassuring to a degree. You have clarified the matter. However, I return to the point that the consultation paper recommends that those issues should be dealt with separately from the plan. In that case, the approach to waste and minerals would not be plan led, might not be strategic and might be entirely reactive. I understand why you would not want a discussion about the structure plan for the greater Edinburgh region to be contaminated by a dispute about refuse disposal, but the issue is strategic. It is best that it is approached strategically rather than reactively. I am concerned that Jim Mackinnon suggested that the councils would continue to do the work but that the strategic thinking would be done separately. Will he assure us that the work will be done strategically?

The Convener: Lewis Macdonald talked about the national economic framework and planning. Where do the area waste plans fit in? That is critical to our discussion.

Lewis Macdonald: As members know, the area waste plans are part of a national strategy. Murray Tosh rightly highlighted a matter on which we will look for relevant responses to the consultation, because the objective is clear. We do not want the strategic planning process to be skewed by one or two issues that are determined on a Scotland-wide—or wider—basis.

Some aggregate planning is done on a UK basis. We are looking for ways of doing that while maintaining the integrity of the strategic planning process and the link to the community for development plans and planning applications, and recognising that they fall into a slightly different category from some of the wider issues. We want strategic plans to focus on some of the big issues that impact on both the economy and the environment in a region including housing, employment and transport—which clearly affect both urban and rural communities.

Jim Mackinnon: On Mr Tosh's question, I add that this is not about the authorities simply reacting, but about partnership with the Scottish Environment Protection Agency and adjoining councils. Just because there is a waste subject

plan, it does not just have to be local; it is inevitable that it will contain a strategic, forward-looking component.

This is a difficult subject and I do not pretend otherwise, but it would not be just a matter of planning reacting; it is about developing a coherent, cohesive working relationship with the area waste strategies and setting out a land-use strategy for dealing with the issues surrounding waste and aggregates.

The Convener: I am aware that Adam Ingram wants to speak, but I want to pursue this point. Does it not boil down to the hard bits, in that difficult decisions concerning local communities are being left out? The Executive will, in a sense, sit back and watch without any strategic overview across Scotland. There are many ways to solve the questions of waste or land availability for housing, for example. What if a council simply decides that it will not have a landfill site when it has to have one? Who will determine the process in such a situation?

Lewis Macdonald: That is a very important line of inquiry. Clearly, we do not envisage a position in which local authorities abdicate that responsibility. In consulting on the national framework, we are laying ourselves open to suggestions along precisely the lines that you describe. We recognise that some areas of policy are of a national character and we want the framework document to be light in touch while perhaps being able to accommodate some of the hard issues—as you described—surrounding landfill, aggregates and so on, which are strategic in character but which are not central to the overall land-use planning strategies that we would expect to develop in a city or region.

Mr Ingram: I wish to develop a different point, about your proposals on the sub-national level. Jim Mackinnon mentioned strong opposition in Ayrshire to the Executive's proposals. There are three Ayrshire people sitting at this table, who I guess will all be singing from the same hymn sheet.

I want to explore the reasoning behind the proposals. We in Ayrshire think that we are fairly well self-contained. One of the key things that we require to do is connect up the areas of need in the county, such as areas of high unemployment, with the areas of opportunity—those areas that provide jobs and development opportunities. It seems to us that a structure plan on an Ayrshire level is much needed. Why should Ayrshire, or any other part of the country that uses landfill for containment—Fife is another example—not have the opportunity to develop strategic plans?

Lewis Macdonald: That will be one of the big issues on which we expect to get a range of views

from the consultation. On the way to the meeting, Jim Mackinnon and I were conscious of the fact that Ayrshire is well represented on the committee, but, as Mr Ingram says, other areas may make similar cases.

We do not want to deny authorities opportunities to develop strategic thinking; we want to remove the obligation on authorities to invest time, energy and resources in a level of planning that may not be appropriate. Our initial view—the view on which we are consulting—is that Glasgow, Edinburgh, Aberdeen and Dundee and their hinterlands, which may be quite substantial, are areas where strategic issues cross the boundaries of local authorities and can be effectively addressed only by local authorities in those four regions coming together through joint committees to reach a view on the strategic requirements.

We are by no means set against arguments from Fife, Ayrshire or other places that make the case that they too face strategic demands, but in assessing cases it is important to examine the hard evidence. For example, this year's census will produce up-to-date evidence about travel-to-work areas, shopping areas and where people go to school, work, and places of entertainment. That information will be part of what we judge in coming to a final view.

In some ways, the structure planning areas that we have are an inheritance from regional councils that no longer exist. The current 17 areas are somewhere between the regional councils that we had and the local authorities that have succeeded them. Some of those areas work better than others as strategic units—some work very well—but the fact that an area used to be a strategic unit under a different local government system does not mean that it should automatically continue to be one now.

The Convener: I will take two more questions, both of which will be from our Ayrshire mafia members. I call Murray Tosh and then John Scott. I hope that your point is not about requiring passports to get into Ayrshire, Murray.

Mr Tosh: Just to show that we have wider perspectives too, convener, I have a question about paragraph 20 of the "Review of Strategic Planning", which, in justifying the creation of a Scotland overview, states that one of the priorities for action is attacking

"the spatial dimension of social justice."

That point is not returned to anywhere else in the document. I am aware that there is a lot of debate about some of the current structure plans. The Glasgow/Clyde valley plan has been praised for specifically addressing regeneration, while others, including the otherwise much-lauded Ayrshire plan, have been criticised for not tackling

regeneration specifically or sufficiently. That is a big issue, which does not come through in the review paper. Do the witnesses—in particular, Jim Mackinnon—have an idea of where the Executive wants to take the strategic planning agenda in terms of the social justice agenda, for example with regard to tackling social inclusion partnerships and regeneration? Where does that fit in?

Jim Mackinnon: Mr Ingram put it well when he said that areas of need sit alongside areas of potential. This is about looking at the potential to develop more effective relationships, rather than seeking to develop a business park next to a deprived housing scheme but not providing opportunities for people to obtain the skills to work there or the transport to get there. That is the sort of issue that we are talking about. There is a social justice action plan and there is the question of how the planning system can contribute to the social justice agenda. It can do so in relation to gaining a better understanding of the areas of need and opportunity.

An example from the past is the problems that there were with Castlemilk, which is beside East Kilbride. There was little connectivity between the two—there was a buoyant new town next to one of the poorest areas in Scotland. There were jobs in East Kilbride, but they were not open to Castlemilk residents, even though they were so close.

John Scott: Are you happy with the inconsistencies that inevitably will be thrown up across the country by your desire to devolve planning decisions to a more local level, albeit within the context of an overview?

Lewis Macdonald: We start with a planning system that has a local basis. We are trying to maintain that, while recognising the need to bring it up to date by reconsidering some of the strategic units and examining what role there is for a national framework document. We are aware of the difficulties that have been caused by inconsistencies in decisions or the application of policy. In some ways, that is an inevitable result of a system that is deliberately devolved as far as is reasonable to local level. We do not intend to change that, but as part of the wider process of modernising and reviewing the system as a whole—and not just strategic planning—we intend to provide support to planning authorities to enable them to learn from each other and improve their own practice.

The planning audit system that we have introduced over the past two or three years has begun to make an appreciable difference to the number of applications that are dealt with timeously and has improved consistency of decisions. In the planning system there will always be a balance between the local level, where we

would like responsibility for most decisions to reside, and the national level, where there will continue to be an appeals process involving ministers and people acting on ministers' behalf. We want to do whatever we can to improve the quality of decisions and to remove unnecessary delays and obstructions from the planning system.

The review of strategic planning is partly designed to assist us to achieve those goals by reducing unnecessary burdens on planning authorities so that they can focus on their job. However, we are also proposing a panoply of changes that are designed to enable planning authorities to do their job as well as possible.

11:30

Jim Mackinnon: A few facts will clarify matters. Every year between 40,000 and 42,000 planning applications are determined in Scotland. The Scottish ministers are notified of about 300 of those, and every year we call in an average of 30 applications. That is a very clear demonstration of the way in which we allow local authorities to take planning decisions. Some of the cases in which we become involved are local cases about which we have concerns. For example, a local authority may be taking a planning decision on land that it owns. We then need to ask what account it has taken of local people's views.

I was interested by John Scott's suggestion that we are pushing decisions down to local authorities and standing back. One of the key planks of the argument that is being made by people in Ayrshire is that exactly the opposite is happening there and that we are trying to usurp power from the local authority.

John Scott: I am just focusing on the philosophical problem.

The Convener: We are big on philosophy.

I would now like to draw this part of the meeting to a close. Some of our witnesses are staying on, but Jim Mackinnon is not. I thank him for his contribution this morning, which has been most useful. His knowledge of parliamentary constituencies is most impressive; I wonder whether he knows the constituencies of all 129 members. However, that is another matter entirely.

We will take a break for five minutes.

11:31

Meeting adjourned.

11:36

On resuming—

The Convener: I bring the meeting back to

order. Before we move to agenda item 4, the minister would like to say something about consultation.

Lewis Macdonald: Before the adjournment I neglected to say that the consultation on strategic planning will run until the end of October. We are still receiving responses to it and look forward to receiving many more. When coming to conclusions, we will seek to make strategic planning consistent with other areas of policy that are being developed, such as the on-going cities review. We intend to commission an independent consultant to examine the responses to the consultation for us. That may relieve the committee of some of the burden of assessing them. However, I hope that the committee will take an interest in the process.

The Convener: We will certainly keep an eye on what happens.

Telecommunications Developments

The Convener: Under item 4, we will take evidence on the Scottish Executive's proposals for telecommunications developments. The aim of this session is to allow the minister to introduce those proposals. We will have the opportunity to ask questions and seek clarification of the details of the regulations in advance of our formal consideration of the regulations at next week's meeting. In line with previous practice, I invite the minister to say a few words.

Lewis Macdonald: I will say a few words about our general thinking on planning controls for telecommunications and associated developments. As you know, the order came into force on 23 July.

At the time that the committee launched its inquiry in September 1999, we were on the point of introducing a prior approval scheme such as has come into force in England and Wales. Clearly, the proposals that we have now implemented were heavily influenced by the recommendations of the committee's report. By our reckoning, 32 of the committee's 35 recommendations applied to matters that were under the Executive's control and we have implemented 14 of those in full and 13 in part. There are five recommendations that we have not acted upon.

We have sought to strike an appropriate balance between enabling the industry to provide Scotland with essential communications infrastructure and protecting our rural and urban environments. We have also sought to meet some of the public concerns regarding the environment. We are keen to ensure that planning authorities, as the day-to-day operators of the system, are given clear guidance about the effect of radio frequency emissions on health and the role of the planning system within that. We believe that our guidance will help to clarify those matters.

Clearly, it is also important that Scotland keeps pace with the rapidly evolving technology. We have therefore taken the view that we should not close the door entirely on permitted development, but continue to permit a limited number of antennas of a limited size to be in place on buildings without the need for planning applications. We do not believe that the effect of that exception will be significant enough on the companies' roll-out programmes to reduce their need to develop new positive working relationships with the planning authorities, which are central to the objectives that are shared by the Executive and the committee. However, the exception should allow a number of smaller

proposals to come forward without taking up the time and energy of the planning system.

It is also important to note that the five major mobile communication operators, as part of their input to the consultation process, made 10 commitments. When our intention to implement our new planning controls was announced in July, I also announced that I would meet the companies over the summer months to discuss with them what those commitments would mean in practice and what would be expected of the operators in the context of the new planning regime. I held meetings with the five major companies and I believe that the companies recognise that the argument has moved on from the position prior to 23 July. We are now in a position in which the planning system will be the arbiter of most developments.

It is important that we now move forward and I am sure that the committee's questions will reflect that. With the development of third-generation technology, this is clearly an appropriate time to change the basis on which those matters are discussed. The order that came into force will assist us in doing that.

The Convener: As one of the survivors of the original inquiry—I think that only three committee members have started and finished the process—I recognise that we have come a long way. We have moved from the original intention, which was for prior approval, to the current situation. The committee will probably focus this morning on the exceptions, but that does not mean that we do not consider that the Executive has taken some fairly substantial steps in the direction of the committee's report. Given the fact that we carried out an investigation, took evidence from witnesses, had consultations and felt that our recommendations were appropriate, it is inevitable that we may focus on areas in which the Executive did not accept our recommendations.

There is a drastic need to transfer the companies' 10 commitments from paper into action on the ground. My experience of the companies has not been too good in the past.

Our concerns must also be balanced by the strategic and social role that mobile communications play in economic development and social inclusion, particularly in rural parts of Scotland. The committee's findings recognised all that and identified a system whereby we could balance those requirements. We may look at mast sharing, telecommunications planning and other areas.

Fiona McLeod will open up our questioning on those matters.

11:45

Fiona McLeod (West of Scotland) (SNP): We want to examine some of the content of SSI 2001/266. As the convener said, we will probably concentrate on the five areas of our recommendations that the Executive did not pick up on.

In your introduction, you said that you have sought to strike an appropriate balance and that you hoped the order would help us to move forward. You said that the order would assist the Executive to meet its commitments to the telecoms industry and would also meet the public's concerns. None of that has been accomplished in what the order says about ground-based masts. We know that ground-based masts will require planning consent, but there are grey areas—bits have been missed out. You must be as aware as committee members that the controls over ground-based masts are already causing great disquiet in our communities—just last night, I was at a bad-tempered meeting in Kirkintilloch.

One of the biggest problems is that we should have introduced retrospective planning permission. Although that was not a committee recommendation, the SNP recommended it. Given the fact that you did not introduce retrospective planning permission, why will replacement ground masts now require planning permission? The companies that rushed in during the two-week period and stuck up anything are now coming back and saying that they can put anything they like on their site now that they have had time to consider. At the meeting last night, BT Cellnet admitted that what they stuck up during the 14-day period was not what they wanted. The company admitted that it will come back to erect something else, which will not require planning permission under the new controls.

Also, you have said that planning permission will not be required if the mast is less than 2m high. What do we do if a company comes back and erects another 2m? What about the creeping growth of some of the existing masts?

Lewis Macdonald: The two questions are clearly related to similar circumstances. For clarification, I should say that although the adjustments that may be made to an existing installation include an increase in height by up to 2m, such an increase may happen only once. In a sense, that answers your second question as well as your first. Of course, cases such as the one that you have described occur and I am interested to hear of them.

The general point is that where a site is already in use, it is not appropriate to introduce retrospective planning requirements. We do not

confine that view to ground-based masts; on planning matters, we hold that view across the board. Once a developer has gone through the planning procedure and has succeeded in obtaining consent—or, alternatively, has been rejected—that should be seen as the end of the process and the matter should not be revisited.

Having taken that view, it was logical that we consider what should happen to a site that existing operators use for second-generation mobile telephony—there are many such sites across the country—when the operator wishes to add third-generation mobile telephony to that site. We feel that that is appropriate if it can be done within the tight constraints that we have described. The 2m limit and the limit on additional antennas on buildings are significant constraints on operators who are expanding their provision from a given site. It is important to be clear that changes to the site will be allowed only as a one-off.

Fiona McLeod: For people who live next door to such masts, a 2m increase in height is a phenomenal difference.

The committee is very keen on mast sharing. Why did you not decide that mast sharing must be considered for ground-based masts? When a company wants to make a change concerning the 2m range, would not that be an appropriate time to say to that company and the other companies that, if a change is being made on that site, all the companies should be considering mast sharing on that site?

The Convener: Before the minister answers that question, there is an issue of retrospectivity that we must consider. The committee agreed that retrospective legislation was not appropriate—for reasons including complexity, delay and legal cases—because we wanted to progress as quickly as possible. However, our fallback position, for want of a better phrase, was telecommunications planning at local and strategic levels, whereby sites could be negotiated away, based on a projection of needs for the roll-out of third generation. Our back-up to retrospectivity was the fact that planners and the five big companies could sit down round the table and negotiate, discussing how they saw the roll-out going and how they could remove some of the more obvious difficulties that communities might have over the sites. Through that negotiation process, a lot of the heat could be taken out of the situation.

The committee felt that retrospectivity would not work and would delay the whole process. We felt that there should be a back-up that would offer the chance to negotiate through a local planning process. However, the Executive has not taken up that recommendation. I wonder whether you would deal with that point when answering Fiona McLeod's point.

Lewis Macdonald: The answer to both points is similar, in that the Executive also feels that mast sharing is often the best way. We also recognise the importance of the kind of planning discussions that the convener described between operators and planning authorities. We have chosen not to make such discussions mandatory, and there are good reasons for that. In some cases, clearly, there will be a positive effect if companies choose to use the same facility; impact will be reduced and so will the number of other sites that may be required nearby. However, in other cases, a decision to mast-share may mean replacing a well-disguised slimline facility, carrying a limited number of antennas, with something that may have to be a lattice structure because it has to carry significantly more weight, has to provide more space for the antennas, and has to be able to withstand significantly more wind. Like the committee, the Executive would like to encourage mast sharing when that is the right solution. However, it will not always be the right solution.

It is important to acknowledge that the roll-out of third generation will inevitably mean that more sites are needed. The Executive acknowledges that, because of the technology involved, every third-generation facility cannot be accommodated on second-generation installations. The cell that each transmitter will cover is likely to be a lot smaller than it is for existing installations. Yes, we need to encourage mast sharing when it is feasible, and yes, we need to encourage discussion between the developers and planners about how best to proceed in a local area, but the Executive's clear view was that an attempt to make that mandatory would not necessarily be productive.

On the subject of third generation, I believe that two companies have announced publicly that they intend to share installations where possible. There has also been speculation about a further two companies—although I have no specific knowledge of that. It is worth noting that there may be other imperatives towards mast sharing beside Government regulation.

The Convener: I, too, noticed those announcements in the media; I hope that they indicate a change in approach and culture in the big five companies. The companies need to live in the new world and stop complaining about the old world and harking back to it.

Discussions about masts on buildings drove the original inquiry—certainly from my perspective, where communities in East Kilbride high-rise towers had installations of Jodrell-Bank-like proportions on their roofs. The inquiry was held because we did not know how or why masts were located. Some of those matters were discussed during our inquiry. When considering the amenity

and health issues that relate to buildings, why adopt a different approach to that which was taken with ground-based masts? We want to explore further the difference in the way that those questions have been handled.

Lewis Macdonald: In general, we intend to offer an opportunity for less contentious, smaller developments. We have said that limited numbers of antennas can be placed on buildings and that those antennas will be of limited size. Issues arise over third-generation roll-out. Over the summer, we met the mobile phone companies and I explored with them how much use they would make of permitted development rights. I wanted to get a sense of what the proportion of those developments would be in comparison with new ground-based masts or other developments that would require planning permission.

It is fair to summarise the position by saying that, in the main, the facility will be useful, but it will not account for the majority of future development. Permitted development will give companies the facility to carry forward some of their developments, but they will have to do so in the context of dealing with planning authorities on the majority of their roll-out projects.

Perhaps I did not answer fully the convener's earlier question about how the authorities and the operators should relate to each other during this period. We considered carefully what the committee had to say about a national planning process. From our dealings with the mobile operators, it was clear that they were prepared to tell us their roll-out plans for area A and area B. I am confident that the mobile operators, for their own good commercial reasons, have an incentive to take early talks with the planning authorities. That means that they can talk through their roll-out plans.

I would be disappointed if it were proved that the permitted development rights that remain for installations and buildings were used other than to speed up less contentious developments. That is because the people who are making those developments on buildings are sitting down with planning authorities, talking about their roll-out programmes and seeking agreement on sites for other locations. Perhaps that will not be as important in the next generation roll-out as it was in the last, partly because of the new restrictions that have been applied to the next generation roll-out, but also because it needs to be seen in the context of the wider planning regime.

The Convener: Thank you. As they say, we will watch as that one develops.

John Scott: The permitted development regulations allow up to two small antennas on dwelling-houses, but not masts. However, 4m

masts are allowed on flats. When is a house a flat or a flat a house? That needs to be clarified.

Lewis Macdonald: John Gunstone will give some technical guidance, as there are rules that apply to fixed telephony points for dwelling-houses.

John Gunstone (Scottish Executive Development Department): In planning terms, a dwelling-house and a flat are not treated in the same way, as they are different entities; the fact that they both serve the same purpose is by the by. Different rules exist for dwelling-houses and for blocks of flats. That applies to the installation of telecommunications equipment as well as to many other circumstances.

The two small antennas that are used by companies such as Atlantic Telecom may have not a traditional telephone, but a radio connection. That facility is available nowadays. In the past, one antenna was permitted; that was increased to two because, in modern-day communications, people might want a telephone line, a fax line, an internet connection and goodness knows what else. The increase allowed a little bit of freeing up. The antennas are much smaller. They are wall-mounted boxes like burglar alarms, rather than antennas that stick up 2m to 6m into the skyline.

The Convener: Does that mean that masts can be mounted on flats?

John Gunstone: Yes, according to the height regulations on the building.

The Convener: That is the position that we wanted to clarify.

Lewis Macdonald: John Gunstone's point about the general treatment of buildings in planning is what is relevant. It is important to separate the fixed radio link operations—for which we are talking about permitting development on all houses—and mobile telephony, which has caused the greater concern. The regulations increase the freedom of manoeuvre for fixed radio link telephony. We see no cause for concern in that, which reflects the difference in technology between the two types of communications system.

12:00

Mr Ingram: Why are masts not allowed on dwelling-houses if they are allowed on flats?

John Gunstone: Purely on the grounds of amenity, scale and proportion. It would be inappropriate, in planning terms, to put a mast on top of the roof of a bungalow in Ravelston Dykes.

Mr Ingram: Because of the physical appearance rather than any other consideration?

John Gunstone: Yes.

John Scott: If someone has a dwelling-house that is split into two—a dwelling-house that was originally flatted—could a 4m high mast be put on it?

John Gunstone: No. The operators would not be allowed to do that on the grounds of height.

Lewis Macdonald: If they do, we will know that they got the idea from the committee.

The definition of dwelling-house includes reference to the height of the building. That should answer John Scott's point about redefining a dwelling-house.

The Convener: On matters ecclesiastical, we will hear from Maureen Macmillan.

Maureen Macmillan: I am fascinated by the ecclesiastical exemption. It is a bit like benefit of clergy or the star chamber.

I understand that no formal listed building consent control is required for the siting of masts in some categories of listed ecclesiastical buildings, as long as the buildings are still in use and the permitted development rights are available. How did that exemption come about?

Lewis Macdonald: The important distinction is between listed building consent and planning permission. The new planning requirements for telecommunications masts will apply to churches just as to any other building. Listed building consent is slightly different and is related not directly to planning permission, but to Historic Scotland's view of whether changes can be made. Historic Scotland has been working voluntarily with the churches to bring the consent rules up to date, as the situation throws up a lot of anomalies—that is recognised by the churches as well.

Maureen Macmillan: How many such churches are there? Is there a possibility of masts and antennas being sited on those churches? Churches are often prominent in rural areas. I would hate to see a forest of masts springing up in my constituency because the Church of Scotland or the Free Church had signed a contract with Vodafone or whoever, although I note the fact that the submission of applications to a planning authority is voluntary. Is that situation being addressed?

Lewis Macdonald: Yes. A scheme that was designed to change the practice was worked up by Historic Scotland and the Scottish churches collectively. According to that scheme, the churches agreed that each denomination would have an internal decision-making body that would refer on cases of buildings that would not have received listed building consent if they had not enjoyed ecclesiastical exemption. I hope that that is clear enough.

The scheme was set in train a couple of years ago, but there was a misunderstanding or a failure of all the parties to work the scheme in the way that they had understood at the beginning. There was, in other words, an attempt to run the scheme on a voluntary basis. It fell apart, not for any sinister reasons, but because it did not operate in the way that it was intended to. The flaws in that have been considered again and I believe that the scheme will be relaunched in January next year.

As far as telecommunications development is concerned, listed building consent is at the side; the key question is planning permission. That is not affected by ecclesiastical exemption.

Robin Harper: As the minister is probably keenly aware, health is one of the issues that came before the committee consistently during our inquiry. Correspondence about the issue still fills our postbags and we also receive telephone communications about it. Along with the Transport and the Environment Committee, the independent expert group on mobile phone technology recommended that public health should be taken into account, but that does not seem to have happened. There were recommendations that health authorities should be involved in the planning process and that indirect, adverse effects on well-being should be taken on board. Will the minister explain the absence of those recommendations from policy?

Lewis Macdonald: I know that the committee made a number of recommendations on that area. We took the view that the planning system ought not to attempt to do somebody else's job—that is the defining argument. Planners would be entitled to seek reassurance—professional guidance, if you like—on health matters.

Behind the Stewart report is the fact that the guidelines by which the radio frequency emissions in the UK were measured have been much toughened by the switch from the National Radiological Protection Board to the International Commission on Non-ionizing Radiation Protection. That has given us a tougher set of standards by which to measure radiation. As part of the changes that we introduced, we require—both for planning applications and permitted development rights—that any proposals for developments are accompanied by a certificate of compliance with the ICNIRP guidelines.

I will come back to other matters, but the one measurable health impact issue that we are all aware of is radio frequency emissions. Our priority was to establish the appropriate guidelines. Although this is mainly a reserved matter for the UK Government, we have taken a close interest in the monitoring of the effectiveness of the standards. We should be careful to ensure that the ICNIRP guidelines continue to be an effective

protection in that area of health.

The Radiocommunications Agency, which is accountable to the Department of Trade and Industry, has begun to conduct a survey of the frequency of radio frequency emissions in schools, which is often a focus of concern. The first survey of that kind in a Scottish school was conducted in the past two or three weeks. The highest level of emission in any school in the UK is one four-hundredth of what is set out in the ICNIRP guidelines. Some comfort can be gained from that.

The ICNIRP guidelines are significantly tougher than what went before, but there is still no installation of which we are aware that comes anywhere close to emitting the levels set out in those guidelines. The requirement that operators provide certification that those guidelines are being met is clearly important.

Robin Harper mentioned the Stewart inquiry's other conclusions, which were that there might be indirect effects on health or effects on health that cannot be measured or definitively ruled out. That has encouraged the precautionary approach. We endorse the precautionary approach, but feel that the UK measurement and protection measures and our new planning requirements will achieve the precautionary approach in practice.

Robin Harper: How does the Executive propose to address the fact that thousands of people are still concerned about health effects? The fact that people are worried about health issues should be a material consideration, irrespective of the state of the science and current evidence. Do you think that what you are proposing sufficiently addresses that?

The Convener: Perhaps I could come in on that point, which is an important issue for those of us who sat through many long evidence-gathering sessions. We found no conclusive evidence on the health effects. However, we concurred that the precautionary principle should be applied in the planning process. That came down to several issues relating to hierarchy of site selection, which is something that the Executive has given a nod to, although I do not know whether that has sufficient force. We did not agree with the notion of a cordon sanitaire—there was no scientific evidence to suggest that we needed to close things down.

Our findings are underpinned by the fact that we constantly talk to our communities. I have stood in front of 80 to 100 people outside a high-rise block and said to them that there is no evidence to suggest a health effect. Sadly, people have lost faith in science. We need to re-establish that faith in science. Our recommendations try to restore that faith and put some local focus in the planning process.

I hear what is being said about roles and responsibilities, but I should point out that we are saying not that there is a health risk, but that people think that there is and that there needs to be an on-going process that can satisfy them that there is no such risk. The irony is that, of those people standing outside that high-rise in East Kilbride, probably 95 per cent had a mobile phone. I constantly remind people of the current scientific advice, which suggests that there is no health risk but that we should adopt the precautionary approach. How have your actions tackled the issue, which is central to our findings, of convincing people on that point?

Lewis Macdonald: There is a complex of concerns. However, there is no doubt that people's concerns about health effects—unmeasured and unproved—lie at the heart of many of the campaigns for change. We fully recognise that. The other aspect that has driven the campaign for change is the fact that until now operators have not been required to have discussions with anybody for the majority of developments that they have undertaken. Operators are now subject to the planning regime, which means that they are required to have those discussions. We anticipate that those discussions will remove a good deal of the suspicion in the public mind. A good deal of that suspicion comes from the fact that people can wake up one morning and discover a development taking place on the other side of the street about which they had no advance warning. That is fundamental to the problem and should therefore be fundamental to the solution. We are attempting to put in place as many constraints as we can to encourage all parties to have such discussions.

It is as though people think that a development is happening on the QT because there is something to hide—the operators are up to something and therefore there must be a health risk. I do not diminish people's concerns but we should recognise that those concerns are compounded by the fact that there has been no culture of communication between operators and communities. Changing that culture is important in addressing those concerns.

The other approach is to deal with specific concerns. We are dealing with the radio frequency emissions in partnership with the UK Government. It is important to carry forward the research that the UK Government and the Executive are supporting to get to the bottom of some of the existing concerns. There is evidence, however limited in scope, of the impact on brain activity of proximity to mobile phone telephony. It is clear that that must be investigated, if only to get at the truth. We must also recognise that, as Sir William Stewart said last week, many of the risks from mobile phone telephony are much greater for

users than they are for neighbours of the base stations. Nonetheless, those concerns exist.

Collectively, we must ensure that people are aware that there are unknowns for users and consumers of mobile phone services and that on-going scientific work is trying to get to the bottom of those concerns.

12:15

Maureen Macmillan: I note your comments on the concerns about emissions and on the fact that emissions from phones are greater than those from masts. However, we do not recommend that children use mobile phones and I am concerned that masts are already sited near children's playing fields. You said that we cannot do things retrospectively, but we must examine the health impact of masts that are close to children's playing fields, given that there are concerns about that.

Lewis Macdonald: Consideration of whether what the convener described as cordons sanitaires—that is, areas of prohibited development—should be imposed was an option that was open to us. We decided against that option for two reasons. The first was based on the steps that we were able to take, reinforce and control on the measurement of radio frequency emissions. It is important to note that if, in its audit of existing installations, the Radiocommunications Agency finds an installation that exceeds guidelines or that is in any other way regarded as a threat to health and safety, it has the power to switch off that installation. I would expect that power to be used, although that is not a matter for the Executive, as the agency is accountable to the UK Government. I would be surprised if the agency did not respond by switching off an installation if it found a source of danger.

The second reason was based on our view of the location of existing installations. I should not speculate on numbers because I always run the risk of getting them wrong but, if I am correct, there are about 500 installations on school sites across the UK; the figure for Scotland is proportionately smaller.

Communities enjoy two safeguards in respect of new developments. First, local authorities are usually the providers and owners of schools and will make their own judgment on whether to accommodate masts on school premises. We know what the response of most local authorities is likely to be. Secondly, the same issue arises in respect of the planning process, as the applications must satisfy the requirements of local plans and must also win the consent, as it were, of the planning system. That is the key to a lot of these questions. By bringing development into the planning system we put a constraint on the

developers, as they will have to talk to planning authorities. Any developer that wishes to build a positive working relationship with planning authorities will have to recognise the particular areas of concern to those authorities.

If we had evidence that suggested that permitting development on school property created a greater hazard to children than that created by permitting development on other property, we would have acted on that evidence. However, we had no such evidence and we acted on the basis of the evidence that we had, while recognising the real-life constraints that will exist for developers who go through the planning system.

Fiona McLeod: Does the minister have more information about the powers that allow the Radiocommunications Agency to switch off masts that break regulations? If he does not have that information, perhaps he could send it to us later.

Lewis Macdonald: Nick Evans knows the precise statutory basis for those powers.

Nick Evans (Scottish Executive Development Department): Those powers, which the Radiocommunications Agency can exercise on behalf of the Secretary of State for Trade and Industry, derive from the Wireless Telegraphy Act 1998, I believe.

The Convener: If there is any further information, just send us a note, but we are happy with what you have said on that substantive point.

Bristow Muldoon: My point follows on from matters that Maureen Macmillan explored. The Transport and the Environment Committee recommended avoiding residential and school areas for the development of masts. I note what the minister said about protection for schools, but that protection would not take account of masts that were close to schools. The location of masts close to schools and houses is a matter of contention for communities. It is my impression that local authorities feel that, although they have been given the responsibility for granting planning permission, they have not been granted the tools to respond to communities' concerns.

Lewis Macdonald: It is important to address the question of how local authorities now implement the powers that they have been given. We have placed telecommunications developments on the same footing as similar developments, which has not been the case before. That means that local authorities have additional powers, because an application for a mast has to come before them and they can treat it in the normal way. They must do that in line with their existing plans and with the national planning policy that we issued at the same time as the regulations.

We did not intend to give—and have not given—local authorities a power of veto and they recognise that fact. I do not think that they expected to receive a power of veto over development, nor would such a power be appropriate. Local authorities are empowered to represent the views and interests of their areas in direct negotiation and discussion with operators. The regulations do not give a power of veto.

I hope that the creation of a constructive relationship between operators and planning authorities follows that allows everything to be dealt with locally. That is our intention. As was covered in our previous discussion, we have set a national planning policy that states clearly and unreservedly that we believe that modern telecommunications development is a good thing and that it is down to planning authorities to find the best way of accommodating that. We have to put it as bluntly as that, because it is important to recognise that if we are to achieve the roll-out of telecommunications technology, particularly third-generation mobile telephony, we must start from the basis that it is good to have such technology in Scotland and that public authorities must work with private companies to develop it. However, if we expect the active support of planning authorities in developing communications technology, the operators must be prepared to take over issues such as location and design.

We expect the new system to work on that basis, but we recognise that there will be difficulties. There is a legacy, at worst, of distrust and, in general, of lack of communication between planning authorities and developers. We recognise that it might take a little time to get over that legacy, but it is essential that we move beyond that.

Bristow Muldoon: You have not quite responded to the question of how local authorities can take into account the interests and views of their communities. Communities are concerned about issues such as health. Although I acknowledge the convener's comments about proven links between mobile phone masts and health, he also mentioned people's distrust of science after matters such as BSE and the links between health and overhead power lines. That kind of distrust arises because such links are not acknowledged and the information later changes.

Furthermore, the Stewart committee raised the indirect effects on well-being, which are likely to be maximised by proposals to site masts directly outside a school or someone's back garden. If local authorities cannot take account of the effects on health or of the proximity of masts to schools or houses, they seem not to have any tools to respond to the concerns of communities.

Lewis Macdonald: I understand your point. Our

advice and guidance to local authorities will contain a number of suggestions about the information that planning authorities should seek from operators when they consider planning applications. Furthermore, planning authorities will be able to consider not only the content of applications but the ability to obtain such information when they decide on any applications.

For example, operators will be required to provide with their application evidence that they have examined siting and design issues. I know from my own postbag—and I am sure that committee members are in the same position—that people often complain, "I have no problem with having a mobile phone mast in my neighbourhood, but it is being put in the wrong place." Before a planning application is considered, a planning authority will require the operator to provide evidence that they have taken alternative locations into account. Such a requirement on an operator or developer helps to build a dialogue that will allow sites to be identified in advance, which is something that we are seeking to encourage.

Bristow Muldoon: If a telecommunications company identified a site that it felt most efficiently maximised the signal to a target area, but the local authority identified other sites that were not as efficient but were far less visually intrusive and more acceptable to the community, would the local authority be able to decline an application for the site favoured by the telecommunications company?

Lewis Macdonald: Technical efficiency, siting and design are all considerations in the final decision. As in all decisions on planning matters, any final decision will rest on a judgment about the circumstances of the case. The major change that the order introduces is that the planning authority will have all the information before it, which means that all the issues will be on the table. That has not been the situation in the past.

The Convener: I am aware of the time. I know that John Scott wants to come in, and that Fiona McLeod has a procedural question. I ask members to keep their questions short, and the minister to keep his responses tight.

John Scott: I want to ask a supplementary to Bristow Muldoon's question. I am slightly alarmed by the minister's comment that there is no power of veto, which means that there is no ultimate sanction and that if the developers press for a particular site, the local authorities will not be able to stop them.

Lewis Macdonald: I expressed myself badly on that point. I meant that the local authority has no power to veto the development of radio telecommunications in its area per se. I did not

mean to say that it did not have the power to reject an individual planning application, which is the point that Bristow Muldoon was pursuing.

Fiona McLeod: I want to turn to the procedural mess that we got into when the statutory instruments were laid. Given that your department has been considering what to do about telecommunications since autumn 1999, why was the order not laid until 25 June? As a result, you had to write to the Presiding Officer and explain why you were breaching the 21-day rule. Can you explain in detail why you felt you had to rush the order through at the last minute?

12:30

Lewis Macdonald: That is the price of democracy. You can find yourself in a position where you are dealing with significant change and you are acting in the context of public concern. When you conduct a consultation, you do so in good faith and in depth. That is what my predecessors and I did to come to the right conclusions. Having gone through that process, we found, towards the end of June, that although not every issue that had been raised in the consultation could be answered satisfactorily from the point of view of the person who raised it, we had addressed an awful lot—we were doing everything we could to address the technical and more general points that had been raised. We then had to decide whether to press on and introduce the regulations, to bring them into force in the summer, or delay laying the regulations until the Parliament resumed last week. We came to the judgment that we should press on.

We laid the regulations and they came into force on 23 July. We felt that that was the right thing to do. Having consulted widely, it was clear that there was a need for change and that, once everybody involved was aware when the change would happen, the sooner the regulations were laid the better.

Fiona McLeod: So it was not the case that the recess came up and hit you in the face and you realised that you had not laid the regulations.

Lewis Macdonald: No. I can vouch for the fact that I and my officials were conscious of the need to lay the regulations for some time before the recess.

Robin Harper: You have just published planning advice note 62, on radio telecommunications. Annex E publishes the operators' commitments, so I presume that operators were involved in producing the document and approve of its contents. The first three commitments are the most important ones: to develop clear standards and procedures for consultation with local authorities; to participate in

pre-roll-out consultation; and to publish clear, transparent and accountable criteria and cross-industry agreement on site sharing. There are no time scales against those commitments. Will the Executive be able to monitor operators' compliance with and dedication to the commitments? Can the Executive call the operators to account?

Lewis Macdonald: Absolutely. It is appropriate to raise that point at this stage in our discussions. That was one of the questions I was keen to discuss with operators over the summer. The precise date on which they said that they would undertake the detail of the commitments varied, but the answer from all of them was that the key commitments were either in place or would be in place in August or September. We have obtained an assurance from the operators on the implementation of the commitments. As was mentioned, it is fine to have on paper commitments to consult and so on, but the key point is how the commitments are translated into practice. We will maintain an interest in that matter.

On future monitoring, we have had discussions with planning authorities to seek their support for our collection of data and their assistance in keeping a watchful eye on the effectiveness of the planning process and in dealing with applications. I have a forthcoming meeting with the Federation of the Electronics Industry, which includes mobile phone operators and fixed-link operators. I will address with the federation the on-going implementation of the commitments and how to gather evidence that the implementation is happening.

The Convener: I want to return to the procedure for laying statutory instruments. SSI 266 was laid on 19 July to replace SSI 244. It contained an additional provision to revoke the existing planning consents. What led to the instrument being laid later? At what point was the decision made? What was the feedback from operators and local authorities on the revocation?

Lewis Macdonald: The simple reason for the decision to lay a further order was that within days of the initial order being laid, we were conscious that different interpretations were being offered as to the impact of the changes in the short term. Those ranged from a view that the order would require all development to cease at midnight on 23 July, and that operators would then have to seek planning permission, to the view—at the other end of the spectrum—that, as long as an operator had notified a local authority of its intention to develop before 23 July, it had beaten the deadline. There were other views between those two extremes.

From the feedback in the first two or three weeks of July, it was clear to us that there was a

danger of planning authorities throughout Scotland applying inconsistent standards. It was also clear that that would be in nobody's interest and that it would create a situation that we wanted to avoid. Therefore, we decided to implement a transitional arrangement so that everybody knew where they stood.

There was some discussion about what the appropriate transitional arrangements should be. My decision, on the basis of what we knew of the technological position, was that any development that had been set in train before we announced the laying of the initial order could be expected to be completed within a couple of weeks of 23 July and so should be permitted to go ahead, but that we should not permit a more generous period because that would lay the industry open to suspicion of abusing the transitional period and lay us open to suspicion of permitting such a thing to occur.

We were keen that the transitional period should be clear, fair and should not penalise people who had genuinely undertaken development three or four weeks before 23 July, but also that it should not permit the flinging up of installations at the last minute. We therefore set the period at a fortnight.

The Convener: Sadly, in parts of the country, the industry was laid bare in that period. In East Kilbride, a wagon turned up on the Sunday to dig a hole so that the operators could say, "We've started, so we'll finish." That was a clear abuse of the process. That did not happen throughout Scotland and not every company did that, but it happened locally and I was contacted about many such incidents throughout Scotland.

That is now in the past. You spoke earlier about living with the current system and about companies now understanding where they fit into the planning process. That is a much more valuable way to proceed. I have direct experience of the situation having been abused on occasion. That was most unhelpful, as the committee is trying to balance helping the industry against community needs. Most of us agree that technology is necessary and is good, but we need to balance that against the needs of the community in relation to planning matters.

Fiona McLeod: The minister said that the price of democracy is the regulations. Perhaps if he had brought the regulations before the committee timeously and they had been scrutinised under the 21-day rule, he would not have had to rush in subsequent revocation, because the problems would have been picked up by this committee or by the Subordinate Legislation Committee.

Lewis Macdonald: Had we been able to do that, we would have done so. If I recall rightly, our initial target date was 6 June—we had hoped to be

with the committee on that date. I assure members that the delay had no connection to other events on 6 June, but was simply to ensure that we had collected all the necessary responses to the technical points and other points that had been raised in the consultation, so that we were as sure as we could be that the regulations would have effect when they came in.

The Convener: We have had a fair hit at the matter. There are no other questions. The minister has had a hard morning with us. I hope that he has enjoyed it. I found the discussion interesting and I thank the minister and his officials for coming along.

Before we go into private session, I want to place on record the committee's appreciation of Shelagh McKinlay's hard work. Shelagh leaves us today to go on maternity leave.

We now move into private session for the final two items. The first is consideration of the committee's draft annual report—it is usual to discuss draft reports in private. The second item is the conclusion of the contractual arrangements for the committee's adviser for its water inquiry.

I thank everyone for attending.

12:39

Meeting continued in private until 12:48.

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