

WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE

Wednesday 1 June 2005

Session 2

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WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE

7th Meeting 2005, Session 2

CONVENER

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

DEPUTY CONVENER

*Christine May (Central Fife) (Lab)

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Gordon Jackson (Glasgow Govan) (Lab)

*Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Ian Davis (Registers of Scotland)

Atholl Duncan (Scottish Water)

Alison Gorlov (John Kennedy and Co)

Allan Lundmark (Homes for Scotland)

Lesley Martin (Scottish Borders Council)

Paul McCartney (Halcrow)

Councillor Keith McIntosh (Midlothian Council)

Blair Melville (Homes for Scotland)

Councillor Adam Montgomery (Midlothian Council)

Councillor David Parker (Scottish Borders Council)

Ashley Parry Jones (LandAspects)

John Rae (Scottish Water)

Mike Traynor (Registers of Scotland)

Keith Wallace (Scott Wilson Railways Ltd)

David Williamson (Midlothian Council)

CLERK TO THE COMMITTEE

Fergus Cochrane

LOCATION

Committee Room 6

Scottish Parliament

Waverley Railway (Scotland) Bill Committee

Wednesday 1 June 2005

[THE CONVENER *opened the meeting at 09:58*]

Late Objections (Consideration)

The Convener (Tricia Marwick): I welcome everyone to our seventh meeting in 2005—our 15th meeting overall. I note that there are many people in the public gallery. If you all squash in together a wee bit, that will make things nice and cosy for everyone.

Agenda item 1 is consideration of five late objections to the bill. The committee is required to consider the objections and to decide whether each objector has shown good reason for not lodging their objection within the specified objection period. If they have shown good reason, the objection will be allowed to proceed to the preliminary consideration stage.

I invite comments from members on each of the five objections that are annexed to the paper. As the paper makes clear, for data protection purposes, we should avoid referring to any personal or sensitive data, such as an individual's contact details, that might lead to the identification of an objector.

Do members agree that the objection in annex A should be allowed to proceed to the preliminary consideration stage?

Members indicated agreement.

The Convener: Do members agree that the objection in annex B should be allowed to proceed to the preliminary consideration stage?

Members indicated agreement.

The Convener: Do members agree that the objection in annex C should be allowed to proceed to the preliminary consideration stage?

Members indicated agreement.

The Convener: Do members agree that the objection in annex D should be allowed to proceed to the preliminary consideration stage?

Members indicated agreement.

The Convener: Do members agree that the objection in annex E should be allowed to proceed to the preliminary consideration stage?

Christine May (Central Fife) (Lab): I have some problems with the objection in annex E.

From its terms, it appears that the objector was well aware of the proposals, and I cannot see why their objection could not—and should not—have been submitted earlier. I would like to hear other members' views, but I am reluctant to accept this objection.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I take a different view. In point 2 of annex E, the objector claims that they have not been kept informed of developments. As we have no way of knowing whether that claim is accurate, and given the basis on which we have allowed the other objections to stand, I think that we should allow the objection in annex E to stand.

Margaret Smith (Edinburgh West) (LD): My view is similar to that of Ted Brocklebank. We cannot know whether the objector's claim is accurate. They say that they have written to the council, asking to be kept informed, and have complained previously to the director about not being kept informed. Given all the other non-notification issues that we have encountered, I am prepared to give this person the benefit of the doubt.

Gordon Jackson (Glasgow Govan) (Lab): We already have a cast of thousands—I do not suppose that another one will make much difference. I do not mean that facetiously. It could leave a bad taste in someone's mouth if we do not allow their objection to stand and, given that we already have a cast of thousands, it really does not inconvenience us.

Christine May: I am happy to defer to my colleagues and allow the objection to go through.

The Convener: Do members agree that the objection in annex E should be allowed to proceed to the preliminary consideration stage?

Members indicated agreement.

The Convener: The committee considers that all the objectors in question have shown good reason for lodging their objections late and that those objections should go forward to the preliminary consideration stage.

Objections (Preliminary Consideration)

10:02

The Convener: Agenda item 2 is the preliminary consideration of objections. The committee is required to give preliminary consideration to the objections at annexes A, B, C, D and E in paper WAV/S2/05/7/1 and to consider its approach to dealing with the objections at preliminary stage. I invite members' views on these objections.

Do members agree that the objection at annex A should be allowed to proceed to substantive scrutiny at consideration stage?

Members indicated agreement.

The Convener: Do members agree that the objection at annex B should be allowed to proceed to substantive scrutiny at consideration stage?

Members indicated agreement.

The Convener: Do members agree that the objection at annex C should be allowed to proceed to substantive scrutiny at consideration stage?

Members indicated agreement.

The Convener: Do members agree that the objection at annex D should be allowed to proceed to substantive scrutiny at consideration stage?

Members indicated agreement.

The Convener: Finally, do members agree that the objection at annex E should be allowed to proceed to substantive scrutiny at consideration stage?

Members indicated agreement.

Waverley Railway (Scotland) Bill: Consideration Stage

10:03

The Convener: Agenda item 3 is consideration of the bill's general principles. First, we shall consider the topic of housing. I welcome to the meeting Councillor David Parker, leader of Scottish Borders Council; Councillor Adam Montgomery, leader of Midlothian Council; and Councillor Keith McIntosh, who is also from Midlothian Council. We will move straight to questions.

Are the planning departments of your respective local authorities sufficiently resourced to ensure that delays attributable to the planning process will not prevent the completion of the 10,000-plus new homes by 2011?

Councillor David Parker (Scottish Borders Council): Scottish Borders Council's planning department is certainly resourced to complete the required homes by 2011. If need be, we will take steps to consider recruiting additional staff.

In recent years, we have taken a serious look at our planning department and have restructured it to bring in a new director and management team. By merging development and building control, we have made available more front-line staff to deal with planning applications. At the moment, we are proceeding with e-planning and, indeed, are about to go out to contract on an e-planning system that will make the department move more smoothly by providing applications on the net and opening up the whole electronic side of things.

Scottish Borders has an excellent track record in employing additional staff—in recent years we have employed additional staff to try to deal with planning applications timeously. I will be keen to provide more staff if that becomes necessary. My officials are clear about the need to deliver the houses in relation to the structure plan and the requirements of the central business case. Scottish Borders Council is politically committed to delivering those houses and we will do everything possible in relation to resources in the planning department to make that happen.

The Convener: Do the witnesses from Midlothian Council want to comment on the council's ability to cope with delays?

Councillor Adam Montgomery (Midlothian Council): My comments will be similar to those of my colleague from Scottish Borders Council. Midlothian Council has had problems with the recruitment and retention of staff, because our area is adjacent to that of the City of Edinburgh Council, which is a bigger authority and pays a bit

more than we do. However, we are up to full complement and we are as confident as we can be that we will be able to deliver the housing as agreed. Our staff are under no illusions about the importance of the project for us. If delays were likely, we would bring in consultants to ensure that the project could be delivered, because it is critical to Midlothian. My colleague Keith McIntosh is the chair of the council's planning committee, so he might want to add something.

Councillor Keith McIntosh (Midlothian Council): We are conducting a review of our planning procedures to identify potential areas of hold-up, not just for the scheme that we are discussing but for our entire operation. The aim is to try to streamline our processes and the planning committee's operations, so I foresee no real problems.

The Convener: Are you confident that there is sufficient interest from developers to support the high level of housebuilding that will be needed if there is to be a sufficient number of potential passengers to support the operation of the railway?

Councillor Parker: Yes, I am very confident about that. There is undoubtedly a demand, and there is sufficient interest from developers to support our forecasts. Currently, as well as considering the bill, Scottish Borders Council is drawing up its local plan, which will come forward on 16 June. There has been an unprecedented response to the local plan process from local and national developers, including developers that have not previously developed in the Borders. Developers are trying to identify sites for development. Only last week in my ward of Tweedbank, more than 100 people waited in a queue from 7 am until 4 pm to try to secure a house in a new development from Barratt Homes. There is demand, and developers are keen to build. The Ryden report and the Jones Lang LaSalle report, which the committee has seen, make it clear that there is evidence about the market. I note that Homes for Scotland made it clear in its letter to the committee that its member companies are interested in developing in the Borders and that developers who have not developed in the area previously are expressing interest.

Everything that I see and everyone to whom I speak in the development industry in the Borders assures me that there is a great need and demand for sites. The council must ensure that it can deliver the sites that developers need, which is why, in the local plan process on 16 June, we will identify a significant number of sites in the main part of the Borders—the Galashiels and Melrose area. I am confident that there are sites and that there is developer interest in meeting the demand.

Councillor McIntosh: Midlothian Council's statutory planning framework is in place through our two adopted local plans: the Midlothian plan and the Shawfair local plan. Of the 4,800 houses that we are committed to providing, more than 4,000 are on sites that have been allocated in the local plans and which have associated developers. Planning briefs, which are required by the local plans, have been prepared and approved for all the main local plan sites in Dalkeith, Bonnyrigg, Gorebridge and Mayfield/Newtongrange. We also have a master plan and design guide for Shawfair. We are well down the road and we are engaging with developers for all the sites.

Mr Brocklebank: It is worth mentioning that we received a late memorandum on housing from the promoter. We have not all had an opportunity to study it thoroughly, so you must bear with us if some of our questions have been partially answered in the memorandum.

Will the communities that the witnesses represent accept without considerable objection the step change in housebuilding that will be required to support the development of the railway?

Councillor Parker: Yes. In Scottish Borders Council, the local plan process has been very consultative. Communities, councillors and everybody at all levels, including the development industry, have been involved in assembling the local plan.

There has been considerable consultation on the sites. Community councils, local members and a range of groups have made representations. They have suggested which sites they are happy to see come forward and which ones they are not happy about.

There has been considerable involvement of local members in the process in recent weeks as we move to the finalisation stage of the local plan. We have spoken with local members in their areas to ensure that we have identified sites and considered the potential problems that may exist.

The big issue is to ensure that enough of the right type of sites is available for the development industry so that, if there are objections, they can be overcome and there is a choice of site for developers to consider. There will always be objections as part of the planning process but, given the type and range of sites that we will bring forward and the consultation that we have carried out, I am confident that we can keep objections to a minimum and that we can certainly deliver the properties by 2011.

Mr Brocklebank: Final approval of all major housing developments lies with the members of your respective councils. Perhaps you can each answer this question. Are you confident that there

is the political will to approve the major developments required to support the operation of the railway, even in the face of possible local opposition?

Councillor Montgomery: Yes. I am very confident that the political will exists. This has been a long-term project for Midlothian Council in conjunction with Scottish Borders Council. Because we are so close to Edinburgh, there is a high level of interest in housebuilding among developers. There are currently 1,800 people on our housing waiting list. We will embark on a 1,000 council house programme fairly shortly and some social housing will be built in the new developments that are coming into Midlothian. We are confident that we can take the public with us.

I think that most people who turn up at public meetings on the issue are likely to be objectors. People who are happy with or not too bothered about the proposals tend not to turn up to public meetings, but the objectors will be there. We have to give out a strong message that there is a commitment from the council to carry out the programme that we are embarking on. As leader of the council, I am more than confident that my colleagues are prepared to do that.

Councillor Parker: I take the same view in Scottish Borders Council. My members' view is that they are committed to the figures on properties that are in the structure plan and in the business case. As part of our local plan process, our officers will come forward with figures that are much greater, and there will be significant land allocations in the central Borders. All the elected members on Scottish Borders Council have participated in the process and have been involved in selecting the sites. There is absolute political will to ensure that we deliver the necessary housing to make the railway a reality.

Councillor McIntosh: I will come back on the point about public commitment to the project. Our two local plans were adopted two years ago—in 2003—after a very long public inquiry. The plans have been in the public domain for so long that it is now embedded in the public consciousness that the houses will be built. We have embarked on our next revision of the local plan—we have moved on a step from the houses that will be built in that specific corridor to support the project.

The Convener: I advise panel members that there is no need for them to press the button on their microphone—the microphones are automatically switched on for us.

Christine May: Good morning, councillors. Your commitment to seeing the project through is commendable and I acknowledge the overall political will that exists. However, how have you reconciled that with the need for members of your

development control or planning committees to consider applications objectively on their merits and to give sufficient weight to objectors as well as developers? Are you suggesting that you are whipping your planning committees, which is probably illegal?

Councillor McIntosh: I will speak for Midlothian Council. We are certainly not whipping our planning committee. All 18 members of Midlothian Council are on the planning committee—it is certainly not whipped. We all have a problem with planning committee issues these days because of the code of practice under which we have to operate. However, we have been assured by the Standards Commission for Scotland and by our own monitoring officers that issues of principle in relation to local plans, structure plans and broad agreements about sites on which houses will go, the number of houses that can be built and so on are issues about which we can speak in public and discuss with the public.

We put out planning briefs, as I said earlier, that specify broadly the number, type and mix of houses that will go on a site. To an extent, a fair bit of the detail of applications is already in the planning briefs that the planning committee has agreed. When any application comes to the planning committee, it is recognised to be part of the delivery of a structure plan, but that does not prevent local members from objecting to or raising issues about particular aspects of material planning considerations.

10:15

Councillor Parker: Christine May has obviously never met my planning committee, because I, as leader of the council, could not whip it if I tried. Planning in the Borders is a non-political matter. All 34 council members meet together to decide on planning policy decisions and there is no administration line. In fact, I cannot remember an administration discussion on planning, because it is considered a non-political issue.

Our clear aims are, first, to ensure that sites are available to meet the demand that exists and, secondly, to cope with any objections. It is clear that some sites might be contentious, some might take longer to come through the system and some might not be acceptable. Like Midlothian Council, we are committed to considering planning briefs. When we have planning briefs for sites of 50, 100 or more houses, we can move forward and involve the community. The planning briefs that we have used in the past have allowed us to deliver sites in a much quicker timescale because we have been able to involve the community in decisions on the sites' development from start to finish.

In February, we issued interim planning guidance on bringing forward uncontentious sites

that, because of the demand for development that exists now, are needed before the local plan is adopted. We are considering new settlements and planned village extensions. We are trying to examine the issues and to help to make sites available. Enough sites will be allocated in the local plan to meet the development industry's demands and to deal with sites that have the potential to attract difficult objections. We can get round all the issues and there will be no need to whip the planning committee.

Christine May: Is it fair to say that there is cross-party political agreement on the general principles and on the structure and local plan issues?

Councillor Parker: Absolutely.

Christine May: However, is it also fair to say that you can give no guarantees on what view your planning committee will take on individual applications for developments?

Councillor Parker: We can give none at all.

Christine May: Do you agree that the major delays often occur in the final detailed consents, rather than in agreements on local and structure plans?

Councillor Montgomery: The Midlothian Council planning committee has major debates at almost every meeting and, when it comes to a vote, Keith McIntosh, as the chair, does not always have the committee's full support—that happens for various reasons, including good ones.

The point about the code of conduct that was made earlier was well made. I was an early victim of it. I have been trying to get a new leisure centre and swimming pool built in my area. When we got the wherewithal to get that development together, I said to the press that it was a great idea and found myself barred from the next planning meeting.

We have had a couple of planning seminars for which we have brought in consultants to take us through the code of conduct, so we are well aware of the issues. Each application will be treated individually, although each is also part of an overall package.

Christine May: Do you agree that detailed consideration by a development control committee is where delays usually occur?

Councillor Montgomery: I do not know whether delays occur then, but that is certainly when they will be sorted out.

Councillor Parker: Delays can occur because of that detailed consideration. I add that Scottish Borders Council has the benefit of going through its local plan process now. Looking at the site selection that we will propose, we genuinely believe that, by working with local elected

members, community councils and communities, by going through the plan process and by using planning guidance and development briefs, we will have enough land supply to cope with the demand from developers and with objections.

Christine May: To be fair, that was not my question, Councillor Parker.

Margaret Smith: Good morning, gentlemen. Will other local authority services—for example, education—cope with the anticipated increase in population that the increased level of housebuilding in your areas will bring?

Councillor McIntosh: Yes.

Councillor Parker: Yes.

Margaret Smith: Okay. You have thrown me by giving me a one-word answer.

The Convener: That is fine—on you go.

Margaret Smith: The witnesses should not be discouraged—I am quite happy to have another.

One of the issues about which we have heard previously, and of which we are aware in our constituencies, concerns the availability of water supply from Scottish Water. Do you have any concerns regarding deficiencies in the water and sewerage systems in Midlothian and the Borders? If so, what are you doing to rectify the situation?

Councillor McIntosh: We have told the committee in written evidence how constraints have been overcome in the past. It is important to note that national planning policy supports the use of planning agreements to require housing developers to provide necessary water and drainage infrastructure. There are requirements for housing site owners and developers to address any deficiencies in the infrastructure, and those are covered in our local plan process.

Although we have identified some problem areas, we are confident that, through joint working with Scottish Water and the housebuilders, those will be addressed satisfactorily. We are talking to Scottish Water a great deal at the moment, not just about our current local plans and the delivery of the houses that are required through them, but about the next stage of our structure and local plans. We are confident that we can iron out any problems that there may be in relation to the developments that we are talking about.

Margaret Smith: You do not have any concerns about the on-going lack of staff resources at Scottish Water.

Councillor McIntosh: We have concerns, which we have shared with Scottish Water. The councils in the area have jointly taken up the issue of quality and standards with the Executive in the hope that we can get some commitment to the

capital investment in the infrastructure that is needed. However, that is the next stage of our plans for the next lot of houses, not for those that we are discussing.

Councillor Parker: There are constraints, but we do not believe that they are a show-stopper. We have a good relationship with Scottish Water and work well on the ground with its officials, who have been involved in our local plan process.

We have found that developers are now developing local solutions to local difficulties. I have here a note on three sites—at Kelso, Newtown St Boswells and St Boswells—where both local and national developers have invested in sewerage and treatment plants to make developments happen. Rather than read that note out, I am happy to pass it on to committee members if they have not been provided with that information.

The Convener: I would be grateful if you could do that. Thank you.

Christine May: In my experience, the difficulty is that Scottish Water does not have sufficient qualified personnel to give the go-ahead to developers that their infrastructure proposals comply with the necessary legislation. You say that you have discussed staff shortages with Scottish Water. What assurances have you been given that it has the resources to employ additional staff? I will take the opportunity to ask Scottish Water about that at some stage, as well.

Councillor McIntosh: I think that that is a question for Scottish Water.

Christine May: So, there is still potential for delay.

Councillor McIntosh: As I have said, we have not identified major problems.

Councillor Parker: Scottish Borders Council has not experienced significant difficulties in its discussions with Scottish Water. Some of the developers to whom I have spoken, who have produced their own solutions for certain sites, have had a good relationship with Scottish Water and have found that they have been able to find solutions during the process.

The Convener: As members have no further questions, I thank the three councillors for attending the meeting—two of them will return to give evidence later.

We will next hear from Allan Lundmark, the director of planning and communications of Homes for Scotland, and Blair Melville of Homes for Scotland. I suspend the meeting for about 30 seconds to allow the changeover of witnesses to take place.

10:24

Meeting suspended.

10:25

On resuming—

The Convener: Welcome, gentlemen. I apologise that we have no name-plate for Mr Melville, because we were not sure until quite late whether he would arrive. However, I am sure that we will remember who he is. I invite questions from members.

Margaret Smith: Good morning, gentlemen. I appreciate that we have a letter from you that outlines some on-going work, but it would help us to ask questions so that the information is in the *Official Report*, to which the public can refer. My first question is quite basic. Given that the issue was important when it cropped up in previous evidence sessions, have you met the promoter since you last appeared before the committee? If so, what were the results of discussions?

Allan Lundmark (Homes for Scotland): We have met senior representatives of Midlothian Council and Scottish Borders Council—the lead officers and planning officials who are concerned with planning matters that affect the development of housing. We listened carefully to what they said about their approach to the business of identifying a land supply and processing planning applications.

We received written submissions from both councils' chief executives. We audited those submissions and the other information that we had been given with reference to land and planning staff and marketing staff in our member companies, after which we formed a view about what the two authorities told us. That formed the basis of our submission to the committee. That exercise allowed us to conclude that, as far as the business case depends on housing development, the committee should consider it to be sustainable and robust on the expected contributions.

Margaret Smith: So you believe that the housing markets in Midlothian and the Borders can absorb the construction of about 10,000-plus new homes by 2011.

Allan Lundmark: I do.

Margaret Smith: That position is different from your position previously, when you had concerns.

Allan Lundmark: The questions that I sought to pose when I previously appeared before the committee were intended to suggest that the evidence that we had about both councils' performance was not sufficient to allow us to judge that they could raise production to the expected levels that were outlined in the business case. We

did not have sufficient information to allow us properly to evaluate that case and we certainly did not have sufficient information to give us the comfort that we sought.

We now have that information, which we have had the opportunity to discuss at length with senior officials of both councils. We examined the processes of converting structure plan land allocations into local plan releases. We considered the processes that the councils will put in place to handle planning applications. We asked whether the councils have sufficiently robust supporting policies to deal with the development control process. We studied staffing levels and the political commitment. We are satisfied that, working with the two councils, we can deliver the expected investment.

Mr Brocklebank: That seems almost like a Damascene conversion from the position that you previously outlined, but we will move on. You identified sites in Midlothian that you considered to be disputed. What do you mean by "disputed"? Are houses likely to be built on those sites by 2011?

Allan Lundmark: I will pass you to my colleague, Mr Melville, who can deal with the specifics of disputed sites.

10:30

Blair Melville (Homes for Scotland): The definition of a housing site as either "effective" or "potential" is set out in planning policy guidance, in Scottish planning policy 3 and planning advice note 38. It is inevitable that councils and the development industry will not always be unanimous about the category into which any particular housing site falls. In any council area, a proportion of sites is always subject to some level of disagreement between the council and the industry.

The disputed sites in Midlothian are disputed on a number of grounds. Principally, they are disputed on the basis that the industry thinks that the process of preparing planning briefs is not sufficiently advanced to give it confidence that the sites will come forward in the next five years. In some cases, there are unresolved water issues to be dealt with. In general, disputed sites are disputed on the basis of the knowledge of developers that have an interest in the site and are pursuing that interest. Homes for Scotland officials do not form views on such matters, but developers with an option on or an interest in sites have views.

That said, it is not uncommon for issues surrounding an uncertain or disputed site to be resolved by the time that the next audit comes round the following year. Issues might have been

examined in enough detail to satisfy the developer that the potential obstacle has been removed. However, when the council and Homes for Scotland audit all available housing sites, we must form a view on whether we are absolutely convinced that a site can come forward or whether there is significant doubt that it can do so. In the previous audit, there was sufficient doubt in the developers' minds to make us unable to say that the 1,000 or so sites in Midlothian would definitely come forward within five years.

Mr Brocklebank: You have highlighted the fact that house completions in Midlothian have lagged behind structure plan requirements in recent years. Where do you lay the blame for that?

Blair Melville: I would prefer not to use the word "blame", which is unhelpful. I will try not to use such words.

Mr Brocklebank: Where do you lay the responsibility, then?

Blair Melville: The promoter has laid out some of the issues, including the fact that a statutory local plan took some years to put into place. Without a statutory local plan that defines which sites are agreed and approved for development, it is difficult to bring sites forward. Bringing sites forward in advance of a local plan would probably require the developer to go through an appeal process in order to appeal against refusal of determination or to ask the council to determine something as an exception to the development plan. Without the comfort of a statutory development plan in place, the process for the developer is far more fraught and difficult.

Our criticism in our earlier evidence was that Midlothian Council took seven years from the approval in 1996, I think, of the 1994 Lothian structure plan to get the Midlothian and Shawfair local plans approved, which is a lengthy delay in anyone's terms. In commercial terms, that is an extremely long time to move from a structure plan that says that X amount of housing is required to producing a statutory framework to try to deliver that. Members have already discussed with councillors this morning the fact that that is not the end of the process. There are potential further delays in dealing with specific planning applications. Historically, the planning process in Midlothian and the Borders has been lengthy and slow.

Mr Brocklebank: Do you still think that the proposals that are before us and the numbers that we are talking about are robust and acceptable?

Blair Melville: The numbers are acceptable to us. In fact, in our response to the Edinburgh and Lothian structure plan, we clearly said that the market could support higher numbers and that there was a case for higher numbers. However,

we will lay that to one side—I simply indicate that we think that the numbers are fine in market terms.

As we have explained, we have sought an assurance from the councils' political leadership that they are committed to delivering those numbers. Given that we have had that commitment, it is difficult for us to gainsay it and to suggest that it is merely a paper one. The councils have given us a firm commitment that they want and expect to deliver those numbers. We will have to work with them to ensure that that happens.

Allan Lundmark: It is important to consider the way in which the industry reacts to planning authorities' regulatory frameworks. Mr Melville explained the position in which we have been in the past few years: when the industry knows that it is difficult to drive out consents, that is a powerful signal. If it is easier to drive out consents elsewhere, the market pressure will be released there. However, the two authorities are now saying to the industry that they have the appropriate policy framework and procedures in place to expedite the processing of planning applications. The industry will react differently when it understands that it is dealing with a system that is not aimed primarily at regulating and controlling its activities, but is designed to facilitate and assist them. That is the powerful message that officials from both councils have given us.

Mr Brocklebank: Yes, but you highlight the fact that Scottish Borders Council has yet to adopt the necessary local plans to allow for the required level of housebuilding in the central Borders. Is there an insurmountable obstacle to an increased level of housebuilding in that area?

Allan Lundmark: Earlier, we were not clear about the extent to which Scottish Borders Council recognised the obstacles that are in the way of converting a structure plan allocation to specific land releases in the local plan. However, Mr Melville and I have had extensive meetings with officials to discuss the council's approach and the way in which the industry will interact during the local plan preparation process. We are now satisfied that the council recognises the obstacles and is committed to dealing with the issues that will arise in driving out specific land releases in the local plan. Our written submission draws attention to the fact that Scottish Borders Council has acknowledged that there is to be a difference in approach, in that it will rely on planned release and windfall sites, which is extremely welcome to the industry. We sought to tease out such issues with both the councils. We are satisfied that they are alive to the obstacles that might remain and that they will address them.

The Convener: When you gave evidence in February, you were extremely critical of the local

authorities' plans, but, today, you are more satisfied with what you have heard from them. That suggests to me that, since February, many discussions have taken place between you and the councils. Given that the bill that we are considering was placed before the Parliament in September 2003, would it have been more helpful all round if the councils had had discussions with you prior to that date or between 2003 and February this year, when you gave evidence? Do you regret that the discussions did not take place until you were extremely critical in your evidence in February?

Allan Lundmark: In our previous submission, we tried to define what was meant by a breakdown in communications. There is little to be gained by revisiting that matter, as it is in the past. The issue of the extent to which we did or did not communicate effectively has gone; we are now speaking effectively with both local authorities. More important, we have established interest among member companies in building in Midlothian and the Scottish Borders and dialogue has taken place on that. We should focus on the nature of the discussions that are taking place now, not on what happened in the past.

Christine May: Good morning, gentlemen. We have asked this question before, but I would like to pursue it with you again. Is the industry equipped to deliver the 10,000-plus new houses in terms of the availability of the skilled members of the workforce who will be needed?

Allan Lundmark: Yes, we are. I have said before in the Parliament that the issue for you is not whether the housebuilding industry can acquire the labour to build the houses, because the answer is that we can and we will. The issue is whether you want that labour to speak with a Scottish accent or whether you want us to import it. There is no problem with providing the necessary skills to build the houses. The building industry already imports skilled labour from elsewhere in Europe. I suspect that few building sites in this part of the world do not have at least two or three languages spoken on them. The market will react and provide the labour to build the houses. I concede that there is an issue about whether we should be training local people to do the jobs, but that is for another place and another time.

Christine May: It is a matter for a different committee, on which I also sit. I will perhaps ask the question there.

You mentioned constraints. I think that you tacitly agreed with me that delays could occur at the development control stage, but you also referred to water and drainage constraints, which I would like to pursue. To what extent will Scottish Water's constraints on staffing levels and its ability

to grant the necessary clearances prevent the houses from being completed by 2011?

Allan Lundmark: I cannot comment on staffing resources in Scottish Water, but I can tell you that we are involved in detailed discussions with Scottish Water about the resources that are coming forward in Q and S III. Indeed, it is a matter of public record that we believe that Scottish Water does not have sufficient resources. We have a meeting shortly with the Minister for Environment and Rural Development to discuss that.

We are in discussions with Scottish Water on how its resources are targeted. Scottish Water needs to be absolutely certain that those resources are being targeted where they are most needed and are not being put into servicing speculative development proposals. The resources should support hard development commitments. I tend to the view that the development in support of the railway is a hard development commitment and that Scottish Water will look at it seriously with us and come to the hard decisions on the infrastructure.

We also accept that part of the drainage infrastructure will be provided by private sector investment. We are in discussions with Scottish Water about how that investment should be put in place and how capacity from that investment will be reserved. There are unresolved issues, but I am confident that we will resolve them.

Christine May: I think that you will also accept that, regardless of where the funding for such infrastructure development comes from, Scottish Water has the final say on whether the development meets the required standards—in my experience, certification can be delayed.

Finally, the third page of the late note that the promoter supplied to us, to which Ted Brocklebank referred, states:

“the housing programme contained within the Central Business Case has been assumed to be extended over a further five years to 2016.”

Does that suggest that the promoter is not confident that the housebuilding programme can be completed by 2011?

Allan Lundmark: I am not sure about the promoter's confidence, but I can tell you the results of the exercise that we conducted with our member companies. There is confidence that we can build the units within the original expected timescale. The evidence that came to us as a result of the most recent exercise that we conducted was that within the central Borders there is already a level of unmet demand, or of demand that could be released and met satisfactorily. We could meet that demand now. There is interest from local and national

companies that develop in the central Borders but, just as important, there is interest from companies that do not develop in that area but that wish to take a position in that market. The response that we got was extremely positive.

10:45

Blair Melville: I will supplement that with a brief comment. In our most recent letter to the committee, we pointed out that the sentence that Christine May highlighted could be read in several ways. It could be taken to indicate what she suggests, which is that Scottish Borders Council lacks confidence in its ability to deliver the structural plan requirement in the relevant period. However, that fits within a context in which, if we assume that the houses are built by 2011, the people who occupy them will provide demand for the railway and their patronage of it will increase beyond 2011. In other words, the same pool of people will use the railway more beyond 2011. However, Christine May is right that the first interpretation of that sentence is that Scottish Borders Council is not entirely convinced that it can deliver the step change in the amount of housing that is required.

Margaret Smith: I want to pick up on your comments about the exercise that you conducted with your member companies. You said that they have identified that a level of unmet demand exists. If I recall correctly, when you spoke to us before, you expressed concern about the travel-to-work time; indeed, you were quite robust in saying that you did not think that people would be keen to buy houses that involved a travel-to-work time of more than about an hour. In the exercise that you conducted, did any of your member companies express concern about that issue or did they feel that it was not particularly significant?

Allan Lundmark: I still maintain that, although people do not buy houses in a particular location because they will have a commuting time of 65 minutes, they will tolerate that journey time because other quality-of-life issues attract them there. I read that another witness said that people had a 65-minute journey time from Dunblane, but there is a popular housing market in Dunblane—we know that we can build and sell houses there. I rather suspect that people buy houses in that area for the benefits that accrue from doing so and that they tolerate a 65-minute commute time. That is the evidence that I get back from people who talk about developing in the central Borders.

There is already an interest in the Borders because of the quality of life there. We can sell houses on that basis alone; the railway may or may not help in adding to the marketing package. In the industry's experience, people will tolerate a journey time of 65 minutes because of other

quality-of-life factors. Although the railway would not be used as a major marketing plank, it would certainly form part of the package when a development was promoted. However, I stand by the suggestion that a 65-minute commute time is not a powerful marketing tool. There are other, much more powerful marketing tools for promoting development in the central Borders.

Margaret Smith: You said in evidence to the committee:

"The preliminary figures suggest that we are building about 200 houses a year in the relevant part of the Borders and there are no current market indications that that rate could be accelerated ... The journey time will not be a significant marketing tool unless it can be reduced significantly."—[*Official Report, Waverley Railway (Scotland) Bill Committee*, 28 February 2005; c 101.]

I take on board what you have just said about the travel-to-work time not being a significant factor; indeed, you have told us that it is something that we can practically disregard. However, I presume that you are now saying that the building rate can be accelerated significantly beyond 200 houses a year.

Allan Lundmark: What I sought to tell the committee was that, given the policy framework and the regulatory regime that existed, we did not think that we could accelerate from building 200-odd houses a year to building 500 houses a year. As I said earlier, we audited what Scottish Borders Council told us about its approach to land release and processing planning applications. We think that a lot of the impediments to driving out the consents are being removed or can be removed. The exercise showed that the information that we held on demand in the central Borders was perhaps not as robust as it could have been, as there could be increased levels of production. The biggest inhibitor was the industry's perception that the necessary consents could not be driven out. Scottish Borders Council has given us assurances that those consents can be driven out within the anticipated timescales. That being the case, we can build the houses to the accelerated levels. The information that I got from marketing directors was that they believe that they can sustain the anticipated level of sales.

Mr Brocklebank: I just want to clarify a point. I am talking about the marketing impact of the central Borders being more than an hour away from Edinburgh. That is important, because, as far as I am aware, the financial infrastructure of the whole deal depends on a lot of people being attracted to live in the area. Are you saying that you are satisfied that there will be such demand, which is contrary to what you said last time you gave evidence, or are you still worried?

Allan Lundmark: Our member companies are telling us that, given the consents, they can

procure successfully additional development in the central Borders. We know from evidence from those companies that a lot of that development is in response to pressures from the wider Edinburgh housing market area. People are moving into the Borders and commuting. They accept that the central Borders is an attractive location in which to live and they tolerate the commuting times. The evidence is that that will continue to be the case.

Mr Brocklebank: But that is not what you said last time.

Allan Lundmark: I think that I have been criticised for contradicting myself, when what I was really trying to say was that I had changed the view that I held based on the information that I had then, which is quite different from what emerged from more detailed and focused discussions with our member companies.

The Convener: I thank Mr Lundmark and Mr Melville for coming to give evidence. We will have a short suspension to allow for the changeover of witnesses.

10:53

Meeting suspended.

10:54

On resuming—

The Convener: I welcome John Rae, general manager of operations south-east, and Atholl Duncan, head of corporate affairs, of Scottish Water.

Gordon Jackson: What specific discussions have you had with Scottish Borders Council, Midlothian Council and the developers on the construction of what we are told might be 10,000-plus houses by 2011 and the provision of water and drainage services? I assume that you have had some discussions. Where are we and what have been the outcomes? What is the up-to-date position?

John Rae (Scottish Water): Fairly extensive discussions have taken place. Primarily, the planning process is the main driver, with the local plan, the structure plan and the planning warrants that are ultimately given for individual sites probably being the mechanism for those discussions. Those processes highlight development constraints and generate further discussion on our understanding of what the constraints are, where they are located and our understanding or lack of understanding of those issues. In turn, that means that we can talk to individual developers about potential solutions to overcome constraints in specific sites. Over a protracted period, a fair amount of dialogue has

taken place with both Midlothian Council and Scottish Borders Council on the issues that have been presented here today.

Atholl Duncan (Scottish Water): At this stage, it is fair to say that we are optimistic that water and drainage infrastructure will not be a barrier to delivering the critical mass of development that will be needed to allow the Borders railway to proceed. We are optimistic for three reasons. First, Scottish Water's investment objectives for 2006 to 2014, which were set out by the Deputy Minister for Environment and Rural Development on 9 February, direct Scottish Water to relieve all development constraints at strategic level, so funding for that work will follow over the eight-year period. Secondly, consideration of the detail of the developments reveals a number of positives. For instance, we could connect 2,000 properties at Shawfair without any change to our existing infrastructure and we could probably connect a further 2,000 by adding more storage. Thirdly, as the committee has heard this morning, we have good relationships with Scottish Borders Council, Midlothian Council and the developers.

As John Rae said, there are some development issues, but a great deal of work is under way to assess in more detail what those issues are. On the evidence so far, water and drainage is not a show-stopper for the progress of most of the developments.

Gordon Jackson: As a Glasgow MSP, I have some background on how water problems can affect developments, so it is understandable that I might get worried about this. What is the position with the present water and sewerage systems in Midlothian and the Borders? As they are at the moment, could they support the development of 10,000-plus new homes during the proposed timescale? If the answer is yes, that is fine, but if the answer is no, can the systems be upgraded? How long would such upgrading take and can you give us a ballpark figure for the cost? I just seek assurance that the capacity exists or can be put in place in time. Our experience in other parts of the country is that development can be stymied because water cannot be provided.

John Rae: The answer is not a simple yes or no. I would like to answer yes, but we will require strategic investment and we will need developers to deliver solutions for the sites that are specified in the proposals that are before the committee. As Atholl Duncan mentioned, Shawfair is a large strategic site that will gain some 4,000 or 5,000 homes. We could connect 2,000 of those homes today, but we would need to upgrade one of our storm tanks on that system to connect more homes. In strategic terms, that will be a relatively cheap and simple solution, although it will cost a couple of million pounds. We need to develop

solutions jointly, so we are in dialogue with planners and the developers. Our strategic intent is certainly to deliver that upgrade. Indeed, Scottish Water will be funded to relieve all strategic development constraints.

11:00

Gordon Jackson: I am trying to think ahead and to visualise what will happen. If 10,000 houses are to be built, upgrading will be needed. Are we agreed on that?

John Rae: Yes.

Gordon Jackson: Over what timescale will that work be done, assuming that the houses will be built? How much will the upgrading cost? What is the scale of the work that is required?

Atholl Duncan: The answers depend on the nature of particular developments, which is why we need to carry out various impact studies. It is important to put the matter in the context of the work that the water industry in Scotland will do during the next few months on its investment focus from 2006 to 2010. We are about to come to the end of our first period of investment, from 2002 to 2006. In that period, the main focus has been on health drivers, environmental improvements and improvements to drinking water quality. In the next period—2006 to 2014—there will be a strong focus on relieving development constraints.

The Deputy Minister for Environment and Rural Development laid out his objectives on February 9 and Scottish Water has done an initial costing of them. The regulator will lay down his draft determination in June. There will then be further public consultation before a final determination in December. After that, Scottish Water will draw up a business plan from which will emerge, eventually, a series of projects that will be delivered between 2006 and 2010. As was mentioned, priority will be given to projects that are in the national planning framework. There is a lot of detail to be worked out during the next few months. It is to be hoped that the various projects that may or may not be needed to support the Borders railway will feature in the plan, which will emerge early next year before the next investment programme starts in 2006.

Gordon Jackson: Okay, but I am still trying to get a more specific idea of the work that will be required. To be fair, it may be that you cannot be so specific. I have the idea in my mind that, between 2006 and 2010, projects will be required to support the railway, if it happens. How much money will be involved? I do not expect you to answer to the penny, but a broad idea would be nice.

John Rae: The shortest answer that I can give you is that we do not know. However, we plan to

commission some early work, with the Scottish Executive's approval, to understand what we need to do to facilitate delivery of the sites that are involved. It is fair to say that, strategically, we have enough water to supply the sites. If there are issues, they are in respect of the sewerage infrastructure side of our work. I am confident that from the drainage impact assessment and the building of computer models to help us understand how our systems work will come a range of potential solutions and costings for delivery of a challenging programme.

Gordon Jackson: I assume that during the next five years we will need to spend money to support the project. You cannot work out precisely how much money will be needed, but I assume that it will be a lot of money. Who will pay?

Atholl Duncan: When the minister made his announcement on February 9, he indicated that there will be a change in who pays for investment in developments. It is worth the committee's while to be aware of that. Scottish Water, through customer charging, will pay for the work that is required at strategic level. That includes work to increase the size and capacity of water treatment works and waste water treatment works.

Gordon Jackson: I hear the word "strategic" all the time, but I am not 100 per cent sure what it means.

Atholl Duncan: In this case, it means work at water treatment works and waste water treatment works. The developer will pay for improvement of the infrastructure between houses and water treatment works or waste water treatment works. That is a change to the way in which things worked in Scotland in the past. We expect regulations on precisely how that will work to come from the Scottish Executive by the end of the year.

Gordon Jackson: Is the change because of the fact that a burden—I use the word non-pejoratively—that did not exist previously will be placed on the developer?

Atholl Duncan: The developer will have to pay for work that developers have not always paid for in the past. Scottish Water will also in the first four years have funding that has not always been available, so that it can undertake work at waste water treatment works and water treatment works.

Gordon Jackson: So you will be funded to provide the capacity. Anybody who wants pipes to run—I understand such matters only crudely—must pay for that.

Atholl Duncan: Yes.

Christine May: I will pick up briefly on some of that. You have said that customer charges will be levied to fund strategic infrastructure developments and that the developer will pick up

the cost of connection to properties. I presume that the additional cost will be passed on in a lower price that is paid to the original landholder or in a higher price that is charged to the eventual house purchaser. That is in addition to the £1,500 levy that is intended to be applied to every property in the Borders, although that matter is not particularly for you.

I return to Scottish Water issues. Customers will pay for strategic development and, ultimately, for local connections. Scottish Water is a national organisation. I assume that the charges will be levied on all customers throughout Scotland—both witnesses are nodding, so I presume that I am right. We have talked only about the discussions that you have had about the Borders, but you have an obligation to remove strategic constraints throughout the rest of Scotland, so the arrangement must be seen as being one element of a national plan that will have costs that we do not know yet because we do not have the results of the studies. The witnesses are still nodding. I can probably do the sums and suggest what the regulator is likely to say because, in the past, the regulator has taken the view that charge increases need to be affordable and manageable. Do you see the conflict that is about to arise?

Atholl Duncan: It is not suggested that charges would have to increase to do the work. Scottish Water has delivered an extensive programme of £1.8 billion over four years. We have done that while keeping down increases in charges—this year, to 2.8 per cent—because Scottish Water as an organisation is becoming increasingly efficient. Our regulator laid it down that we had to reduce our operating costs by 40 per cent in our first four years. I am pleased to say that we are on target to do that. That huge amount of spending is happening while charges are being kept affordable. The intention in the ministerial announcement to which I referred was that charges would be kept stable until 2010.

Christine May: You will forgive me if I have difficulty in reconciling what you just said with what you have said previously and with my experience of the impact of the increase in water charges, which may average 2.8 per cent, but has not been 2.8 per cent in every case, as I am sure you know.

I will ask you a question that I asked earlier about local certification capacity for agreeing that developers' work meets standards. Do you intend to employ additional staff for the Borders or to apply the increase in staff throughout Scotland because every area has development constraints?

Atholl Duncan: The major issue for us is not the number of employees that we have to deal with the situation, but the state of the infrastructure and its capacity. John Rae can add to that.

John Rae: I have recently taken over management of our planning and developer services section. Your question raises two key issues, the first of which is resources to accommodate the market-driven demand. I assure the committee that if additional resources are required, we will put them in to respond to demand. The key issue that Atholl Duncan is touching on is about understanding our assets and the impact that they have on prospective development. Unfortunately, the constraining factor is probably the building of computer models because, at this point in time, we do not have that capacity—or we have it in only a limited fashion. It takes time to put together models that offer us any certainty about prospective solutions. I detect that Christine May has some issues around the resources that Scottish Water is applying to the matter. The main constraining factor at this point in time is in our being able to respond to the building of our models.

Christine May: I am now even more confused; I had assumed that, under a direction from the minister, Scottish Water would deal with the strategic issues and that it would then be down to developers to fund the connections that would be needed to get the capacity that those strategic investments had generated. My question was this: is Scottish Water sufficiently resourced to give the individual consents for the 50 houses that are due to be started tomorrow, but which cannot be started because you have not certified that the water and drainage proposals are adequate? I am not talking only about the Borders. If that is the case in the Borders, I am sure that housebuilders in Fife—the area that I represent—will be delighted to hear that the constraints that they complain to me about week in, week out will be removed. Is that what you are telling us?

John Rae: The phrase that we have used is “strategic assets”, although I understand that one of the committee’s members has difficulty with that phrase. We are funded to remove such constraints. To do that, we must understand our assets so we need to build the models. Unfortunately that takes some time, but there will be a time when those issues will diminish and eventually disappear.

Christine May: So the staffing complement that is being used to develop understanding of the strategic assets will be moved to doing the local stuff.

John Rae: We do not have such in-built expertise within Scottish Water, so we buy it from the marketplace and respond to the need for it in the marketplace.

Atholl Duncan: We accept that there have been issues in the past about the time it takes for housebuilders to get connections from Scottish

Water. We are saying that new arrangements have recently been put in place. We hope that the speed of processing matters such as you are talking about will be greatly improved in the future.

Christine May: That is an aspiration rather than a certainty.

Atholl Duncan: Yes.

Margaret Smith: Good morning gentlemen. Mr Rae said that he did not have any particular strategic concerns about having enough water, but that most of the concerns relate to the drainage and sewage side of the operation in the Borders and Midlothian. Can you give us more information about that?

John Rae: Yes. When there are developments on this scale, the waste flows from feeder sewers into main trunk sewers and ultimately into our waste water treatment works. The existing sewerage infrastructure has finite capacity. As we add more and more on to that system we will come to a point when the sewers will become constrained. They will not be able to take any more flow or the consequences of taking more flow will be that other problems, such as flooding, will materialise. Within this particular system, we probably have a major pinch point on our eastern interceptor sewer, which runs eastwards from Seafield along the Berwickshire coastline. Our early-start proposal is about understanding how that system operates and the potential for solutions that will come from that understanding, as well as of the associated costs.

11:15

Margaret Smith: Is that where your modelling comes in?

John Rae: Yes.

Margaret Smith: Although this may be crystal-ball gazing, it sounds like you are talking about the need to replace sewers and not to build another waste water treatment centre. Is that what we are looking at?

John Rae: It may be that or it may be something as simple as changing our operating methodology. There are many pumping stations and inlets to the system and, by controlling them differently, we may release development constraints. There could be a low-cost solution as opposed to one that has the potential to cost a lot of money.

Margaret Smith: Okay. If I may, I will take you back to the funding issues that my colleagues had a shot at earlier. One of the questions that I still have in my mind is about how decisions on priorities will be taken. The minister made an announcement in February on a programme to relieve development constraints, which all of us

come up against in our constituencies. That is the positive background within which you are to work. There is also the strategic investment money that will come into the project: as we have heard, you also have access to that in terms of charging and developer contributions.

My question concerns decision making on the big strategic projects that will go forward, the relevant sites that are to be developed and the projects on which you are unable to go forward. I think that Mr Rae said that there is no problem and that additional resources would be put in to deal with demand. We all know of areas of demand in our constituencies; somewhere along the line, a decision has to be taken on which strategic projects you can support and prioritise. How will that decision—which will impact directly on the Borders railway project—be taken, who will take it and when will it be taken?

Atholl Duncan: The member is absolutely right: prioritisation is the key point in the development constraints debate. Somebody will get their development constraint relieved in 2006 and someone else in 2014. Since the minister's announcement, Scottish Water has begun discussions with all our stakeholders—the local authorities and developers—to try to come to a conclusion on what the prioritisation process should be. As we sit at committee today, all that I can say is that that work goes on. By the end of the year, we hope to have landed on a clear process of prioritisation that will satisfy all the stakeholders in the project.

It is also important that we see the regulations, which we expect the Scottish Executive to issue late this year. The regulations will outline further detail of how the system will work.

Margaret Smith: By system, you mean—

Atholl Duncan: I mean the terms of the Scottish Executive announcement on development; we are waiting to see the regulations.

Margaret Smith: I assume that Scottish Water will take the decision on priorities.

Atholl Duncan: I suspect that it will, although there has been no absolute conclusion on that. It seems to be natural that Scottish Water should be the lead body to drive forward the work and that it should be the lead player in working with our stakeholders in deciding on prioritisation. Again, all that is part of the on-going discussions.

Margaret Smith: I appreciate that you cannot pre-empt the prioritisation discussions. Obviously, we seek assurances from you that there is no possibility that Scottish Water will turn round and say, "Well, we don't see the Borders railway project as a priority." We seek assurance on the matter and an indicative timetable of when we

might have that assurance. What can you tell us on that?

Atholl Duncan: I can give two assurances. There is already an indication that the development constraints that are affecting the national planning framework will be given priority. We will also seek to support projects that have a hard development commitment which, as we have heard this morning, applies to the developments that we are talking about. Those are the main assurances. However, as the investment programme will need to be tied down before April 2006, the work that is to be carried out between 2006 and 2010 will have to be tied down before then, because the diggers will start in April 2006.

The Convener: I am a bit concerned about the priorities that you outlined. When priorities are determined, it is obvious that, by definition, not everyone will get what they want. Should you not give higher priority to areas in Scotland in which developments are in the local plan and already have outline planning permission rather than to the developments in the Borders, which we are just talking about? Surely greater priority should be given to places that are further down the road in the process. If not, how will you explain to people elsewhere in Scotland that their area has a lesser priority than the Borders, even though pen has not been put to paper there?

Atholl Duncan: To be clear, the ministerial direction is to relieve all development constraints at a strategic level by 2014.

The Convener: Yes, but the aim is to build all the houses in the Borders by 2011, although, given what we have heard today, the date might now be pushed back to 2016. If you are saying that, by 2014, the development constraints in the Borders will be taken away, that does not quite chime with the building of the Borders railway and the houses that are required to sustain the railway, which is why I am asking specifically about priorities. When the priorities are set, some issues will be dealt with by 2006, some by 2007 and so on all the way up to 2014. My point is that, if the Borders railway is far down the list of priorities in terms of its timescale, that will obviously mean that the hoped-for developments will not go ahead. Alternatively, how will you explain to people who, at present, are waiting for Scottish Water to put in resources, that they will not get them until after the Borders railway and related developments are complete?

Atholl Duncan: I return to my previous answer: the system of prioritisation and the investment programme are being discussed and have not been finalised. I realise that that does not give the committee the assurance that it seeks but, unfortunately, that is the situation that we are in.

The Convener: Thank you for your evidence. We will take a 10-minute break before we take evidence from the next panel of witnesses.

11:24

Meeting suspended.

11:40

On resuming—

The Convener: I welcome our next panel of witnesses: Lesley Martin is assistant head of planning and implementation for Scottish Borders Council; David Williamson is head of planning in Midlothian Council's strategic services division; and Paul McCartney is senior economist at Halcrow. Our questions will be on housing.

Mr Brocklebank: Good afternoon—no, it is still the morning. I want to consider the relevance of the proposed new housebuilding to the projected passenger numbers. What impact would a failure to reach the predicted number of new houses by 2011 have on the railway's viability?

Paul McCartney (Halcrow): It would have minimal impact. We carried out a sensitivity test that considered the impact on the scheme if the delivery of the houses were to be delayed until 2016. The results indicated that the net present value, which demonstrates the value for money and viability of the scheme, would decline only marginally.

The new houses are not the driving force behind patronage—that is not the factor that is generating demand. The demand is coming from the people who already live in the Borders. The scheme is less dependent on new housing in the Borders and Midlothian than it is on a number of other factors. A delay in the delivery of the new houses would have a minimal impact on the scheme's viability and value for money.

Mr Brocklebank: We touched on this in other evidence-taking sessions. Everyone is talking about building 10,000 houses by a deadline of 2011, but you are saying that the project would not be adversely affected if the houses were not built until 2016.

Paul McCartney: That is correct. If the houses were delayed until 2016 there would be minimal impact on the business case and the viability of the scheme. Even if there were further delays, there would probably be little impact.

Margaret Smith: The committee had discussions with Scottish Water. For the record, what discussions have the planning authorities at Midlothian Council and Scottish Borders Council had with Scottish Water about the capacity of the water and drainage systems to cope with the predicted level of new housebuilding?

David Williamson (Midlothian Council): We meet Scottish Water regularly to discuss the local plan, structure plans and planning applications and of course we have had meetings to discuss the proposed new housebuilding. As we understand it, Scottish Water is addressing the water supply in Midlothian. There is new investment in the Rosebery water treatment works and that work, which will be completed by the summer, will mean that there will be adequate water for all development in Midlothian, in relation not just to the current programme but to the next structure plan. There will be water. There might be minor network issues to do with water. One or two developers, for example the developers in the Shawfair and Mayfield areas, are carrying out water impact assessments to ascertain whether minor local works will be needed. However, the position in relation to the water supply is sound.

Scottish Water told you that there is drainage for the first 2,000 houses in the Shawfair development, which is the flagship development in Midlothian. We talk about the magic figure for housebuilding in Midlothian up to 2011, but only 1,500 houses will be built in Shawfair by 2011; the bulk of the Shawfair housing development will be post-2011. The proposed development for Shawfair up to 2011 can proceed without constraint.

11:45

We understand that drainage is not an issue in Dalkeith, where three housebuilders are involved and housebuilding has started, and that the drainage in Bonnyrigg is okay. However, there is a potential issue in the adjacent Mayfield area. The consortium of developers there has funded a drainage impact assessment, which is currently being carried out. We will receive the results of that assessment in the next few months and it might show whether there are any local ways of tapping into the system. Gorebridge is not an issue, as its arrangements are separate from the Esk valley regional sewer. Gorebridge has its own sewage treatment works at the south end of the village and all the Gorebridge developers can tap into that.

In our view, the bulk of housing in Midlothian will not be greatly constrained by water and drainage issues up until 2011. We accept, however, that there is a medium-term issue—the eastern interceptor sewer that was referred to—and Scottish Water referred to a study. The three councils—the City of Edinburgh Council, East Lothian Council and Midlothian Council—have been asked to part fund that study, which they will do. It will show whether there are any medium-term issues that may affect house delivery post-2011, but we are relatively confident that we can

proceed with the housing sites that we have mentioned to the committee.

The Convener: Lesley Martin might want to add something about the Borders perspective.

Lesley Martin (Scottish Borders Council): Like Midlothian Council, Scottish Borders Council has regular dialogue with Scottish Water, and we have debated sites with it throughout the local plan process.

There is capacity in the Galashiels and Tweedbank area, which is one of the few areas in the Borders in which there is capacity. That is one reason, apart from the railway, why it makes good planning sense to locate development in that corridor. In its discussions with us, Scottish Water has said that if we concentrate our development in particular areas, that will help it to plan its investment, which is why the strategy in the Borders is to focus development. Railway or no railway, there are many good reasons for creating a critical mass of development in the area that can support further Scottish Water investment.

Many of our sites are constrained, as they are in many other parts of Scotland. However, as our council leader said at the beginning of the meeting, there have been instances in which there has been a constraint on the face of things, but the developers have been able to overcome that constraint through working in partnership with Scottish Water.

Of course, drainage capacity is always fluid. We receive regular updates from Scottish Water on the capacity position, but we find that it changes quite a lot over time. Something simple can happen on the ground—for example, industrial premises can close—and people will suddenly find that there is additional capacity. Like Midlothian Council, we think that there is a lot of evidence that suggests that we can deliver the houses. In fact, a queue of developers has said to us, “Don’t worry about the drainage constraints. As long as we know about them, we can address them.”

Christine May: I am glad to know that water issues are fluid. Mr Williamson tapped into those issues several times.

I would like the witnesses to clarify something. Previously, we heard that the revenue support costs for the project are predicated on the levy that will be applied to houses and so forth, but I think that we have heard from Mr McCartney and we have read in the memorandum that we received over the weekend that 67 per cent of the total patronage growth will be due to general economic growth and further diversion from other modes and that 33 per cent will be due to new houses being built. I think that Mr McCartney suggested that a slippage in the timetable for the building of houses would not be particularly detrimental. If the houses

are needed to support the revenue, how can those two seemingly contradictory statements be squared?

Paul McCartney: Two issues are involved. I said that delaying the houses will not impact on the economic viability of the wider case. That is slightly different from the financial aspect—

Christine May: Do you mean the wider case for housing or the wider case for the railway?

Paul McCartney: The wider case for the railway. The wider economic case for the railway takes into account much more than the financial case. There will be implications for the financial revenue that will arrive as a consequence of the houses, but I was not referring to that. However, there will be financial implications.

Christine May: Okay. Where will the general economic growth that is referred to come from if the houses are not there?

Paul McCartney: In the model, the main generator of demand is general economic growth. As economic growth occurs throughout eastern Scotland people become wealthier, travel more and generate more trips, so patronage increases. There is a direct correlation between economic growth and the amount that people travel—that is what generates demand.

The Convener: What assurances can you give us about the amount of social and affordable housing that will be built as a result of the railway? When and where will such houses be built?

David Williamson: We have shown you the figure of 4,793 houses being built up to 2011. Most of those are on sites that are already in local plans. Those plans make provision for affordable housing. In the Midlothian local plan we are looking for between 5 and 10 per cent of the sites to be for affordable housing. In the Shawfair local plan the figure is 20 per cent. In addition, the council has its own social housing build programme, some of which will be in the Waverley corridor. We have estimated that over the period to 2030—some of the figures that we have given you go up to that date—something like 17.5 per cent of all houses built will be affordable or social houses, but there are different means of providing that.

Lesley Martin: Scottish Borders Council has just approved draft supplementary guidance on affordable housing, which will provide for a minimum of 10 per cent of all housing across the board to be affordable. That will rise to 15 per cent in areas of higher demand. We hope that with better housing-need information we will be able to raise those targets. The really challenging and exciting thing that has been happening in the Borders is that we have seen a surge in demand

in the past three years that I do not think anyone expected, which has led to higher land and house prices, which means that there is a crying need for affordable housing. The benefit is that with higher demand we can raise our housebuilding rate and get a larger pool of housing from which we can generate affordable houses. That is why the railway offers such an irresistible challenge in that we can generate more affordable houses out of the total pool. We need the pool of houses from which to get our affordable housing. Getting more housebuilding is an important tool to enable us to get more affordable houses.

The Convener: You must have been heartened and relieved to hear this morning's evidence from Homes for Scotland, given its evidence in February, with which it is no secret that you were not best pleased. I am sure that much dialogue has taken place in the meantime. Why did the kind of positive dialogue that seems to have taken place from February until now not take place in the run up to the bill's introduction and the period up to February this year? Given that one of the reasons why we called you back is that we were not satisfied with the answers that we got from you in February, do you not think that we could have saved ourselves an awful lot of time and trouble if there had been greater communication between the local authorities and Homes for Scotland in the initial period?

David Williamson: In a word, yes. It would have been nice to have avoided taking up the committee's time and coming back to give more evidence on these issues. We provided information of which Homes for Scotland and independent housebuilders were aware. They chose to take a pessimistic view about the housebuilding rates that could be achieved as part of the Waverley case. We took a different view. We have had considerable dialogue with Homes for Scotland since February in which we have gone over the programming of housing year by year. That is something that we do in the housing audit process with housebuilders each year. We do not just determine which sites are effective or non-effective; we discuss with the housebuilders how many houses are intended or anticipated for each site on a year-by-year basis.

For each year, whether it is 2005-06 or 2006-07 right through to 2010-11, we have a pretty clear idea of the housebuilding rate. There is no doubt that we and the housebuilders now understand clearly that we are ratcheting up the housebuilding rates in Midlothian. The figure that we should reach by 2010 is something like 800 houses being built a year. There is agreement among all the housebuilders on that. Perhaps we needed to go through the process to get that clarity with all the housebuilders, but we have got it now.

I would like to add one more point. There was a note of scepticism as to whether that amount of housing could be delivered in a council area such as Midlothian. A major component of that is the new Shawfair community, which is a flagship development for the council with 4,000 new houses on the inside of the city bypass, almost in the suburbs of Edinburgh. It is a substantial development interest and it will definitely go ahead. The importance of that development is that it will get up to something like 375 houses per annum at its maximum development rate, which will run from 2010-11 right through to 2016. If you take that site and all the other sites in Midlothian, you very quickly get up to the figure of 800 houses a year. We are confident that that can be achieved.

Lesley Martin: The local plan is at a slightly earlier stage in the Borders. It completed its consultative stage only at the end of October last year. We have been well aware for some time of the housebuilders' desire for more land to be provided in the central Borders. That dialogue has been going on for a while.

Mr Lundmark referred to industry perceptions, and I think that it has taken the housebuilding industry a little time to believe that the council is really serious about providing substantially more land in the Borders. It is a different kind of Borders that we are looking at in the future. The old-style, small housing developments were scattered here and there, but much bigger schemes are now coming in and there is a more planned approach to development. That is something that the council has been signed up to for several years with the structure plan strategy, which is a very challenging strategy to provide a lot of land. In our dialogue with the builders, we have accepted that in order to get the throughput of build you need to have enough of a pool so that there is an alternative if a site falls out.

We talked about what happens if development control committees refuse sites, and that can happen, but as long as you have a big pool something else can come in to fill the gap. Indeed, the system provides that you have to have a five-year supply. If sites keep being refused, sooner or later a windfall has to come in to fill the gap or a reporter will simply say, "Sorry, but you have to approve that, because you're running out of your five-year supply." The process is always dynamic and always changing, and we always have it under constant review with the builders.

Mr Brocklebank: Such an outbreak of consensus is admirable, and it has been encouraging for all members of the committee to listen to all the different political groups saying that they will find agreement and that it will all be perfectly possible. Of course, there is the

possibility that, after the local government elections in 2007, there could be completely different political complexion on both councils. Is it possible to conjecture whether the consensus that we see today will be upheld beyond that date?

David Williamson: The sites in Midlothian are in the statutory plans. The political complexion would not matter. The sites will come forward.

Lesley Martin: That is how it is in the Borders.

The Convener: I thank you all for coming to give evidence.

We will now hear from Councillors David Parker, Adam Montgomery and Keith McIntosh on the subject of patronage. I ask the next panel to take their places. Thank you for attending, gentlemen. I notice that Mr Muirhead has replaced Councillor Keith McIntosh. Nonetheless, you are very welcome.

12:00

Christine May: Good afternoon, again, to some of you and, for the first time, to Mr Muirhead.

I want to depart slightly from patronage. It has been rumoured that the cost of the railway has risen. Will you confirm that it remains at £151 million?

Councillor Parker: Yes, I can confirm that. After the mischievous press articles in question appeared, my officials met Scottish Executive officials to check the previously agreed costings and to examine the methodology and other issues. As I understand it, the Scottish Executive and our officials are absolutely at one in being satisfied with the costs as they stand.

Christine May: So where did the story come from?

Councillor Parker: For some time, the Waverley line has been subject to a raft of speculation, from both its supporters and its objectors. A number of mischievous sources are at work, and I would not like to try and guess the source of this story. I really do not know.

Christine May: Given the general experience of capital projects, is it not a very serious possibility that costs will increase?

Councillor Montgomery: Since I became leader of Midlothian Council, my only experience of such projects has been the completion of the new school campus at Dalkeith, which was built on time and on budget. We are currently going through the same process for eight new primary schools and are confident that we will deliver them on time and on budget. We think that the construction of the Waverley line will be no different.

Councillor Parker: I am extremely risk averse with regard to costs and capital overruns. We have built a range of safeguards into this process. The minister has made it clear that all the funding and cost assumptions need to stack up before we can push the button on this railway. We will agree with the Executive a clear risk analysis and risk management strategy; indeed, we are already discussing those issues. Moreover, tendering and other aspects of the scheme will be subject to the Office of the Deputy Prime Minister gateway process before we push the button. Come what may, we must ensure that the costs are affordable and that the railway can be delivered.

Christine May: I look forward to seeing the first major capital project in this country's history to come in on budget. I am sure that, if it does, we will all beat a path to your door to find out how you did it.

Councillor Parker: We will do our best.

The Convener: There seem to be no further questions. Gentlemen, you appear to have got off very lightly. I would escape now before members decide to ask you something else. We appreciate your attendance this morning.

I welcome to the meeting Keith Wallace, the chief executive of Scott Wilson Railways, Paul McCartney, Lesley Martin and David Williamson.

Mr Brocklebank: Good afternoon, lady and gentlemen. The promoter's memorandum of 13 May 2005 states that comparisons with the Robin Hood line are not particularly relevant to the Waverley route. However, that appears to contradict early evidence suggesting that the comparison was indeed reasonable. Are you able to give us other examples that we can look at instead, which demonstrate that your patronage forecasts are robust, given the estimated future population in the Waverley railway corridor?

Keith Wallace (Scott Wilson Railways Ltd): At a meeting on 14 March 2005, I used the example of the Robin Hood line specifically to illustrate a point about regeneration rather than patronage. I made the point that railways can make a big difference to regeneration. We also made the point that it is difficult to compare like with like, as every railway is different. I support the clarification that the Halcrow team gave in its memo to you.

The Bathgate to Edinburgh line provides a reasonable comparator; yet, your advisers seem to argue themselves out of that one, asking why we should compare the Waverley line with a small part of the network. The Bathgate to Edinburgh line is a reopened single-direction railway that has experienced a very high level of demand. The figures that have been quoted from reliable sources, over nine years, show a level of increase that is in the band above what we are estimating

for the Waverley line. It is difficult to make straight comparisons, but a comparison with the Bathgate to Edinburgh line would be reasonable.

Mr Brocklebank: I hoped that you would be able to give us further examples. You are saying that the comparison with the Robin Hood line was not a fair comparison, but that the Bathgate to Edinburgh line provides a fair comparator. Is that it? Other than those two lines, is there nothing else on which to base your estimates?

Keith Wallace: No, I am not saying that. Dr Mark Brown's opening statement at the committee meeting on 14 March outlined four key principles of the demand modelling approach, which is a pretty extensive piece of work. Mr McCartney may wish to expand on that. Benchmarking is something that we do to see how a scheme fits, and our evidence shows that the elasticities are well within the range of other schemes. That is really all that we can do, as every scheme is slightly different.

Paul McCartney: The main difficulty is that not many such schemes have been introduced in Britain in the recent past; therefore, it is difficult to find comparators. We used the example of the Robin Hood line in a completely different context, to give an estimate of patronage. It is difficult to make comparisons, but we are fairly confident that we have a robust methodology. We have used conservative estimations and assumptions, but that has still generated a positive net present value and has demonstrated that the scheme is viable. Experts from the Strategic Rail Authority have supported our analysis and have agreed that the assumptions that we have used are conservative. The SRA has agreed with the approach that we have adopted, which suggests that the patronage forecasts are reliable.

Gordon Jackson: You forecast a trip rate—if that is the right expression—from stations that, to some, appears optimistic in comparison with data from the "Passenger Demand Forecasting Handbook". In the memorandum of 13 May, the promoter seems to express concern that the forecasting handbook is not particularly relevant to the Waverley line. I am not quite sure why that is. The other side of the coin is what you have been telling us. I am trying to get a little more understanding of what your benchmarking techniques are, which would demonstrate why your forecasts for individual stations are plausible. You tell us that they are robust, but it is difficult for us to get specific on that.

Paul McCartney: You raise a number of issues. I know where you are coming from, with regard to Arup's response to our original paper.

The Convener: I remind members that Arup is providing our committee advisers. It will be for the

committee to weigh up the evidence that our advisers give us and come to a conclusion on that, just as we will weigh up the evidence that the witnesses give to us. I do not think that it is helpful for witnesses to criticise the committee's advisers while they are giving evidence.

Paul McCartney: Okay. I was not about to criticise Arup, but I will leave that company's name out of it.

The PDFH is essentially used for guidance if there is no proper evidence to use. Our study is based firmly on evidence. We carried out a detailed stated preference survey and questionnaire to get a flavour of people's travel behaviour and how they will react to changes in prices. We used that in our methodology, and did not feel the need to use PDFH because we had that information. The figures that came out of our questionnaire and survey were slightly different from what was in PDFH.

The issue is whether Gorebridge and one of the other stations are seen as being in prime commuter areas. It is to do with definitions. I will let David Williamson respond in detail on that in a second. However, we firmly believe that the areas and stations are located in a prime commuter belt outside Edinburgh. Firm evidence demonstrates that the majority of the working population in those areas is working in Edinburgh.

David Williamson: On the definition of what is a commuter area, in the wards that comprise Gorebridge the percentage of economically active people who work in Edinburgh is almost 49 per cent. That is even higher than the Midlothian average, where the figure is 47 per cent. The figure is also 49 per cent in Eskbank. By that standard alone we argue that those towns, which are close to Edinburgh, are part of the commuter area.

Keith Wallace: I do not wish to criticise Arup—

The Convener: Well don't.

Keith Wallace: I want to make something quite clear: the PDFH is guidance and if it is used on its own it is a simple approach. We have been at pains to show—as Dr Brown did clearly in his opening statement last time—that we have gone way beyond the PDFH in the level of detail and sophistication; we have enhanced what is in the PDFH. The rebuttal at the weekend pointed out some of the basic interpretations of PDFH, but we have done much more than that. We have taken a much more informed approach to patronage. Effectively, Halcrow has done the body of work this time, and the work that we did in the original study, when MVA looked at demand, broadly supports the Halcrow findings. The SRA also supports them. You will recall that the Waverley Route Trust said that there were ways of getting

more patronage than we forecast and did not contend that we were not conservative. Four bodies, not just one, have come forward and said that the patronage figures are conservative.

The Convener: Are there any other points?

Gordon Jackson: We have spoken in the past about the scheme breaking even within six years of opening. Without quoting your 13 May memorandum at length, which of course I could do, I wonder whether that suggests that there is doubt about the break-even point being achievable. The memorandum says:

"With regard to the break-even point, if revenues are lower than forecast, this point will clearly be delayed. However, the Promoter suggests that it is the lower cost structure of the Waverley Line compared with other railways that is the principal factor behind the six-year break-even point and not the revenue projections."

The second half of that says, "The revenue won't matter," but the first half seems to suggest, "Well, if we get the revenue wrong, the break-even point will be delayed." The memorandum seems to cast a little doubt—I put it no higher than that—on the six-year break-even claim. Wearing my other hat, I might say that there is a caveat in the memorandum, which I am trying to get to the bottom of.

Keith Wallace: I can begin with the lower cost structure. If you remember, back on 14 March we talked about the renewal spike, and how there is a difference between the cost for an existing railway and a new railway. In this case there is a massive spike in renewal benefits, because there is a new railway at the start and therefore the maintenance and renewal costs of the railway are delayed to a distant point in time, whereas with an existing railway the costs are constant and are spread equally over every year. With a new railway, the maintenance and renewal costs are delayed, which is what Halcrow was referring to in the memo.

12:15

Paul McCartney: The break-even point is a function of two factors: revenue and cost. I do not want to labour the point, but we have been conservative in our assumptions on the generation of revenue and even with that conservative assumption the break-even point is less than six years. I suspect that if we were less conservative, the break-even point would be earlier. By definition, if the revenue is not generated, the break-even point will be later, but because we have been so conservative it is likely that that point will be reached within six years.

Gordon Jackson: I suppose that what I am asking—I realise that this is all hostage-to-fortune stuff—is whether you are confident about the

break-even point being reached within six years. Am I wrong to read a wee bit of doubt into that?

Paul McCartney: We are confident about the assumptions that we use in the model, and the model generated the six-year break-even point.

Gordon Jackson: Is that a yes?

Paul McCartney: It is a yes.

The Convener: Thank you again for coming to give us evidence.

The final topic of the day is notification. I think that most people know that that is the committee's favourite topic. Our first witnesses are Councillor David Parker and Councillor Adam Montgomery. I welcome them again.

The committee has been critical of the notification arrangements. There has been an enormous delay in our consideration of the bill because of the failure to notify people who deserve to be notified of the project. It is important to say that we are now satisfied with the notification arrangements, although we will reflect on the issue in our final report. The committee is striving to ensure that we learn as many lessons as possible for the benefit of future private bill committees that consider notification arrangements. With hindsight, would you as promoter have done anything differently? I am aware that time is pressing, so I ask you to give fairly brief answers.

Councillor Parker: I have never been known for brief answers, convener.

The Convener: Could you try now, please?

Councillor Parker: I will do my best.

Alison Gorlov and others on the later panels are competent in land referencing and the technical issues, and because of their experience of other projects they are more able than I am to speak about what they would do differently. I absolutely understand the frustration that the committee felt and I apologise on behalf of the promoter for the difficulties that you encountered. The committee deployed sensible decision making, and as well as being scrupulously fair to objectors it has been fair to the promoter in allowing us to get the reference to where it is. We all recognise and are disappointed about the time that it has taken to get to that point but, as you say, the reference is now sound and competent and I hope that it gives the committee the confidence to move forward.

On the specifics, we would certainly raise questions about the methodology and the guidance. We suggest that those aspects should be examined so that future promoters are clear about what is expected of them. A different approach to referencing could have been taken. My colleagues on the later panels will be able to

give a more detailed explanation of what we might have done differently.

The Convener: You are right that most of our questions will be for the next panels of witnesses. Thank you for your attendance, gentlemen.

I welcome Ian Davis, who is the legal director with the Registers of Scotland and Mike Traynor, who is the information director with the Registers of Scotland. Margaret Smith has indicated that she would like to ask a question.

Margaret Smith: I have waited a long time for this. Good afternoon, gentlemen. What is your general assessment of the promoter's approach to the notification and referencing for the bill?

Ian Davis (Registers of Scotland): It would help to inform the committee's view if, in answering the question, I briefly set out the background to the property registers in Scotland. There are two property registers in Scotland: the general register of sasines and the land register. The general register of sasines, which has been in existence since 1617, is a register of deeds that relate to property transactions. The main types of deeds that are recorded in the register are those that transfer title to property—many of which contain plans of the property and surrounding areas—and those that relate to loans that are made by institutional lenders. The sasine register is gradually being replaced by the land register, which was introduced in 1981 and which is now operational throughout Scotland. A sale of property for value triggers a transfer of property from the sasine register to the land register. The land register, which involves registration of title, is map based—every title that is registered has a title plan that is an integral part of the land certificate.

Both registers are used extensively for searching purposes. In order to establish ownership and other information, the usual starting point is to search the land register and the sasine register. The registers are a rich source of information that members of the public and organisations have used widely over the years for different purposes, including compulsory purchase. Both registers offer access to a wide variety of information that can help to inform decisions on ownership.

To return to the question, it would be difficult for the Registers of Scotland to comment on the methodology that LandAspects employed, to which we were not party. We know only what we have been told in our capacity as witnesses to the committee. However, an extremely helpful methodology would be to search the registers as a starting point.

Margaret Smith: From my experience—I worked on the land register for five years at the beginning of the process—my understanding is

that, in the register of sasines and the land register, we have as close as possible to 100 per cent coverage of the land of Scotland. Although in some cases it may be more difficult to search for information about a piece of land, within the two registers there is scope for people to find information on any piece of land.

Ian Davis: That is correct, although the process for the land register is a lot simpler and quicker, because it is a map-based register. A search of the register via either the online registers direct service or one of the Registers of Scotland customer service centres can reveal information about properties in any area—such as the corridor for the proposed line—including who owns the property, whether it has been registered and information about surrounding areas.

The register of sasines, which is a register of deeds, is a bit more problematic; it is not map based, although many of the deeds contain maps. The process of using it is more laborious and can take longer, but if the right personnel are involved—whether they are Registers of Scotland staff or professional searchers—spending time on such activity can produce excellent results.

Gordon Jackson: In the area that we are talking about, how much of the property is on the land register as opposed to the register of sasines? A rough idea will do—you can take a guess, if necessary.

Mike Traynor (Registers of Scotland): At present, about 28 per cent of the property in the Borders counties is registered in the land register.

Gordon Jackson: So most of it is still on the register of sasines.

Mike Traynor: Absolutely.

Gordon Jackson: I just wanted to know that.

Mike Traynor: I add that searching the register of sasines is highly dependent on the competency of the description that one has to hand.

Margaret Smith: Your main point is that anyone who lodged a private bill of a similar nature in future would, for the most part, be able to gain access to information on who owned property relatively easily by going to the register of sasines or the land register.

Ian Davis: They would certainly be able to get such information from the land register. With the register of sasines, whoever was doing the searching would require a name and an address. That would take them into the various indexes that give access to the required information. A name and an address would be a prerequisite for searching the register of sasines.

Margaret Smith: When you say that it is necessary to have a name and an address, that

immediately suggests that one would need “Margaret Smith”—for example—and my address, but in fact one could search the register of sasines by using knowledge of the fact that a branch of a particular address once formed part of a wider estate. If one has the name of the wider estate, one can use that to do a search, which one might be able to follow through. There are different ways of coming at the issue.

Ian Davis: That is certainly the case. You obviously have a tremendous knowledge of how the register of sasines works.

Margaret Smith: I have five years of experience of working with the register; I will not comment on whether I was any good at it.

We want to learn lessons from what has happened. Given the Parliament’s requirements as regards notification of people who will be affected by a bill’s proposals, as far as you are aware, is there any information that the Registers of Scotland could not provide and which could be obtained only through the use of the services of a land referencing company?

Ian Davis: Given that most property in Scotland is registered in either the register of sasines or the land register, diligent and informed searching of those registers could be extremely fruitful.

Margaret Smith: Will you provide some indication of the costs of searching the land register and the register of sasines?

Ian Davis: The search fees are set out in a fees order by the Registers of Scotland. I think that the cost is £2 per sasine search sheet—which is a chronological document that narrates details of a property’s history and all the transactions affecting it—and £4 per property for the land register.

Margaret Smith: Can I clarify that, as well as being able to search the register by name and address, there is occasionally scope—if one is assisted by the right personnel—to search it using such information as full bounding descriptions?

Mike Traynor: That is certainly possible if you are talking about the land register. Many forms of search are now available through geographic means, so it is possible to put a picture on a landscape.

Margaret Smith: In effect, the registers are lists of people who own property, but would the land register be able to help us with leaseholders or tenants who required notification?

Ian Davis: The land register would not show short leases of less than 20 years and the position is similar for the register of sasines.

12:30

The Convener: Can the Registers of Scotland carry out searches for organisations? Would people have to go in for each individual search, or would the Registers of Scotland do it for commercial companies and organisations?

Mike Traynor: As Ian Davis said, we have two dedicated customer service centres that support inquiries from the general public and from business users. We have our online registers direct service, which business users can use to conduct searches themselves. We have done similar searches for commercial outfits. We would do that in dialogue with the companies so that we could understand the parameters of their requirements and advise them as to how best to do the searches.

Christine May: The Parliament thought that it was fairly clear about the notification arrangements. Given what we have now discovered from the bill, are there any changes to the Parliament’s requirements for notification that would improve the position and enhance the chances of capturing the information that is required by works bills?

Ian Davis: It is difficult for the Registers of Scotland to express a view on that. However, there has to be an appreciation of what the registers can provide. From the background papers that I have read, I understand that it was agreed that specific criteria would be set to determine who the affected parties are. It might have been helpful if those criteria had been set so that the people who were doing the work knew exactly what they were looking for. If we are talking about proprietors, a lot of rich information can be had from the two property registers, but there are limits to what the registers can do. They will not show who leases property if the lease is a short-term one and, for example, a servitude right of way might not appear on the register of sasines.

Christine May: Might it be useful if, in such circumstances, the Parliament enclosed with any documentation an outline of what the Registers of Scotland can provide?

Ian Davis: That might be helpful. Checking the registers is an essential starting point for any major exercise such as this one; it gives a good foundation. It will not tell you everything and there might well be difficulties in searching the register of sasines because it is not a map-based register. That said, a lot of diligent inquiry and attention to detail by professional searchers or the staff of the Registers of Scotland who know what the process is can be fruitful.

Mr Brocklebank: This might be an unfair question—if it is, you can tell me in your reply. If you had been asked to handle the notification

arrangements for the corridor that the railway line is supposed to be running down, how long would it have taken to come up with the numbers and details, and what percentage of success would you have expected to achieve?

Ian Davis: The context for my answer is that we have not previously been involved in this exercise but have been asked as witnesses to give evidence about what services the Registers of Scotland can offer. It is therefore difficult to give an informed view on that.

Mr Brocklebank: Okay, that is fair enough.

The Convener: As there are no further points, I thank you very much for coming to give evidence. I thank Mr Davis in particular for his brief opening statement, in which he explained the registers. I am sure that that explanation will be required reading for any future student of conveyancing.

I welcome our next and final panel of witnesses: Alison Gorlov, who is the parliamentary agent for John Kennedy and Co; David Fish, who is the principal surveyor and quality manager for LandAspects; and Ashley Parry Jones, who is referencing manager for LandAspects.

Mr Brocklebank: Good afternoon. At our meeting on 21 March, Alison Gorlov stated:

"with certain types of land, it is impossible to find out who the owners are on any referencing basis."—[*Official Report, Waverley Railway (Scotland) Bill Committee*, 21 March 2005; c 270.]

However, Registers of Scotland has indicated that the register of sasines and the land register of Scotland between them cover 100 per cent of all land interests in Scotland. How do you respond to that?

Alison Gorlov (John Kennedy and Co): I will deal with that, but I will hand over to others if necessary.

Two quite separate things must be considered. First, as Mr Davis of the Registers of Scotland just said, certain interests such as servitudes and leases under 20 years are not registered. The Parliament requires that we notify owners, lessees—however long their lease is—and occupiers. Therefore, quite a large number of people will not be traceable in the registers simply because they do not have registrable interests.

In the passage quoted, I think that I was referring to the level of coverage of the registers. As the committee has heard, the two registers between them cover 100 per cent of Scotland's land interests but 100 per cent of them are not readily traceable. Interests that are in the land register of Scotland do not pose a problem—we have never said that they do—but, as the Registers of Scotland people have just said, interests that are in the register of sasines can be

difficult to trace, especially if they concern large estates. Searches of the register of sasines will not necessarily show conclusively who owns the land. A search might do so, but it might not.

There is no conflict, I think, between us and the Registers of Scotland. Searches of the registers can be a fruitful source of information. However, although the land register will yield current information about ownership, for land that is not in the land register, a search will not necessarily yield the required up-to-date information on who owns the land. If one cannot trace by other means who currently owns a piece of land, it might not be traceable through the register of sasines. That is really all that we are saying.

The Convener: I think that the Registers of Scotland were saying not that the registers are useful, but that they are the essential starting point. There is quite a difference between your interpretation of what the Registers of Scotland said and our interpretation.

Mr Brocklebank: I was about to make that point. Alison Gorlov said that the register is a valuable source of information. Are we to infer from that that she started her search by going to the land registers of Scotland?

Alison Gorlov: Let me say immediately that I did not start a search anywhere, as I do not do referencing. I simply advise referencers when they come to me.

Mr Brocklebank: Was the search started in the land registers then?

Ashley Parry Jones (LandAspects): Yes. At the outset, we undertook a search of the land register along the corridor of the route. As we have heard, not everything on that route is registered in the land register, as distinct from the register of sasines. I have the figures with me. In February 2003, only about 19 per cent of the interests in the Scottish Borders and 12.4 per cent of those in Midlothian were registered in the land register, although those figures have gone up since. I suspect that most of the interests that are already in the register are in the more urban areas, but the Waverley project is almost entirely rural. We know that property of an agricultural nature is less easy to locate in a search.

The register of sasines covers everything, but as your witness from the Registers of Scotland said, it is necessary to make an informed search of that register. One needs the name and address for the entry for which one is searching, but of course the purpose of the referencing is to ascertain those names and addresses. We are caught in a catch-22 situation, whereby we need information to conduct a search for the self-same information.

The Convener: I confess that I am quite puzzled. You do not undertake a full search of the

land register of Scotland and the register of sasines at the outset of the process, but if the bill is passed you will undertake a full search to inform compulsory purchase. The witnesses from the Registers of Scotland told the committee that the registers are the essential starting point. Given that you intend to undertake searches, why do you not do so at the beginning of the process?

Alison Gorlov: We have passed to the committee a letter from the Keeper of the Registers of Scotland, which was written on 29 July 2002 in response to an inquiry that was made at the outset of the proceedings.

Gordon Jackson: I have not seen the letter.

Alison Gorlov: I am not sure whether we have enough copies of it.

The Convener: We have only just received a copy of the letter. Notwithstanding that, will you answer my question? If you intend to carry out a search at a later stage in relation to the compulsory purchase order, why do you not do so now and get it over with?

Alison Gorlov: I am sorry, convener. I am trying to get to the point as quickly as I can. It might help the committee if I pulled together the information that I garnered over a period.

The letter was written in response to an inquiry that was made on the basis of all the information that was available at the outset of the process. Naturally, at that time there was no information about names and addresses. The Registers of Scotland was sent a map, which showed nothing more than the line of the former railway. In his letter, the Keeper of the Registers of Scotland explained, very fairly:

“there are limitations to sasine generated searches, for example, Buccleuch Estate, Secretary of State for Scotland and other owners of large areas of ground are not specific enough to make them viable searches.”

That response was understandable, given that the starting point of the inquiry was absolutely zero information—all that we knew at that stage was the route.

The initial search produces very little, as the letter demonstrates. Therefore, one has to begin an iterative process. Referencers go out on the ground and make inquiries of other publicly available information, so that they can start to build up a picture of who owns what. As the information filters through, if it becomes apparent that the registers will contain information that is not available elsewhere, the referencers return to the registers with names and addresses. However, at the outset of the process, they do not have sufficient information for the registers to be able to assist much.

I will fast forward to the end of the exercise, by which time an act will have been passed and a

reference will be in place. At that stage, much referencing information will be available, none of which was available at the outset. Therefore, when land assembly starts, we are starting not from zero but from an informed base.

The Convener: We have no record of the inquiry that gave rise to the letter. The committee will consider your remarks, but we still want to speak to you about the lessons that can be learned from our experience of the process, which will inform the procedure for future bills. That is important.

12:45

Gordon Jackson: Let us move on, as they say. We have the benefit of hindsight and we have been undertaking the exercise together for a long time. Given that, what do you recommend should be done differently? Will you help us with referencing?

Alison Gorlov: I am happy to do so. We had a helpful discussion with the clerks about technical changes that might be made and I would be more than happy to provide a note with ideas, but the details are technical and I suggest that they might be better dealt with outside the meeting.

On the broad principles, one imperative of any project is to have a programme that can be kept to, because many factors must fall into line. Referencing is only one piece of the jigsaw. Other pieces are basic engineering, environmental assessment, arranging funding and building up a business case. All those tasks must be undertaken together, to a programme. Therefore, it is very important to have closure of each work stream.

One difficulty that was identified with searches of the register of sasines is that, in many cases, the information is difficult to tease out. As I just said and as I think the Registers of Scotland has confirmed, that must be something of an iterative process. Such basic information as is available is obtained, from which one teases out what one can as further background information makes the conduct of informed searches possible.

One needs to be able to do that in a way that allows for closure at a point. Referencing could not take nine months when the rest of the exercise took only six, because by the time that referencing had caught up, other elements would be out of date.

We found from the helpful meeting that we had with the clerks and the Registers of Scotland that the Registers of Scotland believed that, using its own searching techniques, it could complete a search of a given area in weeks, although it might revise that view if it were given a particularly long route such as the Waverley line. However, the

Registers of Scotland reckoned that it could at least make a time estimate, which the Waverley referencing team told me that it would have grave difficulty in doing.

If I were planning a project with clients in the future and the Registers of Scotland told me that it could produce in a given period a worthwhile search from the basis of no more than a map, I would find that an extremely useful procedure that I would certainly recommend any client to adopt. Unfortunately, the alternative can be to produce somebody who can do all sorts of interesting and useful searches but over an indeterminate period. That is a major issue.

The other issue of principle involves clarification of how the rules are formulated—in several ways, they are not as clear as they might be. What can be done about that boils down to technical details. Our memorandum highlights the principal matters that have given rise to difficulty. Clarifying the rules would not be terribly tricky. I am sure that discussion with the clerks would enable other promoters to do that.

Gordon Jackson: Are you referring to the Parliament's rules and requirements?

Alison Gorlov: Yes.

Gordon Jackson: Can I take it that you see ways to change the Parliament's requirements for intimation that would enhance the chances of capturing everybody? Perhaps you will tell us about that in writing.

Alison Gorlov: I would not suggest the principles of how that should be done, because different approaches exist and it is for the Parliament to decide which to take. For example, whether one wants to capture only people who might be entitled to compensation or to aim at anybody who might have an interest in objecting, whether or not they will be entitled to compensation, is an issue of policy for the Parliament. I was thinking more of how, having made that decision, you formulate it. I was thinking not of the technical drafting of the determination—that is Mr Cullum's forte and I would not dream of encroaching on his patch—but of changing the method of getting the message across to promoters, which is not formulaic. If a rule is spelled out that cannot mean anything other than A, B and C, people know where they are. If they are given more latitude, that naturally introduces a degree of uncertainty. All I am talking about is a means of resolving those two extremes.

Gordon Jackson: Do you think that we have not got that right?

Alison Gorlov: I do not think that the balance is quite right yet. That is not surprising. The rules are brand new and adopt an approach that is

noticeably different from equivalent procedures elsewhere in the United Kingdom. I discussed the matter with Mr Cullum, the first time the non-Executive bills unit was dealing with private bills, and he opened the discussion by saying that the rules were untested and we would have to see how they worked using the first two bills that came along, which were the Waverley Railway (Scotland) Bill and the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill. People had identified anomalies at the time, but the idea was to see how the rules worked in practice, give it a go and then start ironing out the wrinkles when we knew from experience what those wrinkles were.

Gordon Jackson: When you write to us about the technical stuff, as it were, will you expand on that too?

Alison Gorlov: We have started that discussion.

Gordon Jackson: Good.

Margaret Smith: I want to clarify a couple of points. Are there persons or bodies for whom intimation is currently required who you do not think need to receive notice? I do not know whether you feel that you can comment on that now or whether you want to reply in writing.

Alison Gorlov: I can certainly comment on it in principle. Intimation is slightly different from notification in the referencing sense. Referencing is aimed at finding out what land is affected by the bill and who has a particular interest in it—a proprietary interest such as ownership, lease or occupation. That is what the referencers and the book of reference are for.

The sort of public bodies that I think you are talking about, such as Scottish Natural Heritage, the Scottish Environment Protection Agency and Historic Scotland, have an interest that is not specific to any given plot of land; their interest is much more general. It is absolutely right that the Scottish Parliament's procedures contain no specific requirement to send those bodies anything at all, or even to consult them, although of course they are consulted. Other comparable procedures do require notices to be served or copies of the bill to be sent to such organisations. However, consultation is carried out. Copies of bills are not always sent; sometimes they are not wanted—occasionally people have said, "Not us. Why are you using this address?" Therefore, it would be helpful for the procedure to be formalised.

Margaret Smith: Do people who are employed in referencing have access to the valuation roll and the council tax register?

Alison Gorlov: Not to the council tax register; that is not a public document.

Meeting closed at 12:54.

Margaret Smith: But they have access to the valuation roll.

Alison Gorlov: Yes.

The Convener: We would be extremely grateful if you would send us the technical document that you referred to. We have technical questions of our own that we have not explored, so we will be writing to you in the next few days. The letter will be sent this afternoon and it would be appreciated if you could respond as quickly as possible. I thank witnesses and members of the public for attending.

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