The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

# LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 14 September 2011

Session 4

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## LOCAL GOVERNMENT AND REGENERATION COMMITTEE
**4th Meeting 2011, Session 4**

**CONVENER**

*Joe FitzPatrick (Dundee City West) (SNP)

**DEPUTY CONVENER**

*Kevin Stewart (Aberdeen Central) (SNP)

**COMMITTEE MEMBERS**

*Ruth Davidson (Glasgow) (Con)
*Kezia Dugdale (Lothian) (Lab)
*Mark Griffin (Central Scotland) (Lab)
*David Torrance (Kirkcaldy) (SNP)
*Bill Walker (Dunfermline) (SNP)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Margaret Burgess (Cunninghame South) (SNP) (Committee Substitute)
Dr Richard Simpson (Mid Scotland and Fife) (Lab) (Committee Substitute)
James Alexander (Scottish Council for Development and Industry)
Professor Glen Bramley (Heriot-Watt University)
Fraser Carlin (Heads of Planning Scotland)
George Eckton (Convention of Scottish Local Authorities)
Jenny Hogan (Scottish Renewables)
Allan Lundmark (Homes for Scotland)
Jim Mackinnon (Scottish Government)
Craig McLaren (Royal Town Planning Institute in Scotland)
Alex Mitchell (Confederation of British Industry)
Andy Myles (Scottish Environment LINK)

**CLERK TO THE COMMITTEE**

Eugene Windsor

**LOCATION**

Committee Room 2

# Scottish Parliament

## Local Government and Regeneration Committee

*Wednesday 14 September 2011*

[The Convener *opened the meeting at 10:02*]

## Planning Policy in Scotland

**The Convener (Joe FitzPatrick):** Good morning. I welcome everyone to the fourth meeting in 2011 of the Local Government and Regeneration Committee. As usual, I ask everyone to ensure that they have switched off their mobile phones and any other electronic devices, which—as well as being embarrassing—interfere with the microphone system.

We have received no apologies from committee members, so we will move straight to agenda item 1, which is a round-table evidence session on planning policy in Scotland.

This is the second of the round-table events that the committee is hosting with the intention of using them to assist us in formulating our work programme for the next 12 months. We have agreed that we will finalise the programme after the October recess.

I ask witnesses and members to introduce themselves for the benefit of the official reporters. My name is Joe FitzPatrick, and I am the MSP for Dundee City West and convener of the committee.

**Kevin Stewart (Aberdeen Central) (SNP):** I am the member for Aberdeen Central and deputy convener of the committee.

**Jim Mackinnon (Scottish Government):** I am the Scottish Government's director for the built environment and chief planner.

**Mark Griffin (Central Scotland) (Lab):** I am an MSP for Central Scotland.

**Craig McLaren (Royal Town Planning Institute in Scotland):** I am national director of the Royal Town Planning Institute in Scotland.

**Bill Walker (Dunfermline) (SNP):** I am the MSP for Dunfermline.

**George Eckton (Convention of Scottish Local Authorities):** I am team leader for environment and regeneration at the Convention of Scottish Local Authorities.

**James Alexander (Scottish Council for Development and Industry):** I am policy and communications manager at the Scottish Council for Development and Industry.

**Ruth Davidson (Glasgow) (Con):** I am a member for the Glasgow region.

**Jenny Hogan (Scottish Renewables):** I am the director of policy at Scottish Renewables.

**Allan Lundmark (Homes for Scotland):** I am director of planning at Homes for Scotland.

**David Torrance (Kirkcaldy) (SNP):** I am the MSP for Kirkcaldy.

**Fraser Carlin (Heads of Planning Scotland):** I am from Renfrewshire Council, representing the Heads of Planning Scotland.

**Alex Mitchell (Confederation of British Industry):** I am planning director at James Barr, representing the Confederation of British Industry.

**Kezia Dugdale (Lothian) (Lab):** I am an MSP for the Lothian region.

**Professor Glen Bramley (Heriot-Watt University):** I am professor of urban studies at Heriot-Watt University.

**Andy Myles (Scottish Environment LINK):** I am parliamentary officer at Scottish Environment LINK.

**The Convener:** I thank you all.

I will kick off the session by asking about the Planning etc (Scotland) Act 2006. The act's main aims were to streamline the decision-making process, to ensure that Scotland has an up-to-date development plan and to improve public engagement, among other things. Do the witnesses think that the act has achieved its aims?

**Jenny Hogan:** I will not go into too much detail about why renewable energy is our priority for Scotland. I offer that as a given—particularly in a week when the Scottish Government has, in its latest economic strategy, reinforced that renewables are integral to Scotland's economic recovery. I will highlight three key points that are integral to our review of the 2006 act and where it is now.

First, it appears that there is still a disconnect between national policy priorities and local decision making in some cases. Secondly, the modernisation process has been broadly welcomed by our industry; we view it as a positive thing, and we certainly would not want it to be ripped up in order to start again. However, it is starting to throw up a number of practical issues that we feel must be addressed if we are to meet the aims of the reforms.

Thirdly, there is a lack of consistency and proportionality—and in some cases, justification—in the approach that is taken by a number of local authorities in development planning and management. The main reasons for that appear to

be a lack of understanding of projects, such as renewables projects, a lack of confidence in decision making and a lack of accountability in the system. All those things are relevant to the 2006 act.

**Andy Myles:** Scottish Environment LINK members are proud to have taken part in the discussions on the 2006 act as it went through Parliament. By and large, although there are still problem areas with regard to the act's operation, we think that the streamlining process worked to a certain extent, as was necessary. We are not interested in a planning system that just throws up disputes, but in a streamlined system in which problems can be solved at the earliest possible stage. That is the ethos of the non-governmental environment organisations in Scotland.

We are convinced that we still have a system that is plan led, as opposed to development led. That is crucial in achieving sustainability, which has been reinforced through the single policy guidance statement. In general, although there are problems with regard to the national planning framework, which we outlined in our submission to the committee, and small issues that relate to permitted development rights, Scotland has a planning system that is fit for purpose on the basis of the 2006 act.

**David Torrance:** Have the improvements increased the speed of the planning system? I have found—putting on my other hat as a local councillor who has spent 17 years in planning—that we still get a number of complaints about delay, and how long it takes local authorities to process planning applications, especially in relation to microgeneration. Some applications have been in the planning process for two years, just because local authorities drag their heels.

**James Alexander:** We agree that there is definitely a problem with the speed at which planning applications are processed. We are considering whether there should be a mutually agreed target between developers and decision makers on how long it should take for decisions to be made. It is crucial that people have an awareness of timing and that there is consistency in decision making so that other plans can be put in place.

We supported the 2006 act, and, like Jenny Hogan, we agree that there is a problem with national priorities and local decision making. Those two areas need be linked much more closely, particularly on renewables, but also in areas such as salmon production, where there are distinct problems.

There is a problem with the expertise of decision makers in some circumstances. Many of them are experts on particular topics, but the Government could be doing more centrally to relay to local authorities exactly what its aspirations and ideas are, particularly on national energy and renewables targets.

We support a local planning approach but there needs to be some flexibility. The situation has changed dramatically since five or more years ago, when some of the local plans were last refreshed. We have seen a need to move into much greater economic growth for Scotland, and there is, of course, a stronger focus on climate change through the Climate Change (Scotland) Act 2009. Those things need to be reflected in local plans and we need flexibility around that.

**Craig McLaren:** It is still early days in implementation of the planning act. Although it was passed in 2006, we must remember that it is being introduced incrementally. There are bits that have not been introduced yet that will have a big impact on how we process planning applications, for example on permitted development rights, which the Scottish Government is working on now.

We feel that the system gives much more confidence and certainty, which is what developers and communities want. We can take things forward by pushing things up front. Performance is improving slightly, bit by bit. That is a good thing—we hope that it is something that we can build on and take forward.

Planning performance should not just be judged by the speed with which a planning application is processed. That is important, but there is also a key message that planning is about trying to create great outcomes for places and great places for people. We need to think about the impact of that. It is easy to make a bad planning decision, especially if you make it quickly; it is much more difficult to make a good planning decision, which takes account of the longer term, the broader community and so on.

**Jim Mackinnon:** We have heard words today such as "speed", "efficiency" and "streamlining", but let us remember the political commitment on which the 2006 planning act was drawn up. Although the requirement was to make the planning system more efficient and inclusive, virtually all the political and media debate was around greater opportunities for public involvement in planning, which the new act introduced. That was against a background of a system that had more opportunities for public involvement than any other area of public policy. That was the political and economic climate in which the act was drawn up.

As Craig McLaren rightly pointed out, it is quite early days. The act gave ministers the opportunity to make a suite of secondary legislation. We did that in the course of the previous session of

Parliament. Two significant issues are outstanding. One is on permitted householder development, which will be with the committee shortly, and the other relates to permitted non-householder development, which covers issues such as hill tracks and car parking at airports. We are certainly aware of those.

Tomorrow, the committee should see the publication of the Audit Scotland review of the planning system one year on. I will leave people to draw their own conclusions from that.

Craig McLaren is absolutely right to say that it is not just about speed, although speed will always be important. Many people in the development industry are looking for two things: first, an authority that is open for business and, secondly, predictability in outcome. Those are what communities are looking for, as well. We do not have a blinding planning system. The development plan is an important consideration, but it is not an absolute determinant, so we have to take account of new evidence and views, and so forth.

I was interested in the comment about the national planning framework and the concerns about that. When we drew up the framework, we produced a participation statement that set out how we would go about it. We consulted, including holding workshops, right across Scotland at the beginning of the process, on the consultative process. There were also 60 days of parliamentary scrutiny. There was an extensive process of scrutiny and involvement, which I suspect is not seen in many areas of public policy.

**The Convener:** Craig McLaren talked about the time that it has taken to implement the 2006 act. Why has it taken so long?

**Jim Mackinnon:** The act gives ministers the powers to introduce regulations. We had to introduce a completely new suite of development plan regulations. That happened nearly 18 months ago, followed by development management regulations about how planning applications are decided, the establishment of local review bodies and tree preservation orders. There is a suite of regulations that reform how we do planning agreements. We have consistently adopted an inclusive approach to developing secondary legislation, partly to make jobs easier for committees, so by and large there are relatively few areas in which there is dispute.

Permitted householder development is particularly difficult. The initial research, which I think was carried out by Glen Bramley at Heriot-Watt, identified a substantial number of planning applications that could be taken out of the system. However, there were concerns expressed by local authorities and others about not being comprehensive, and local authorities believed that controls over things such as decking and hard standing should be properly regulated because of the individual and cumulative impacts they can have. That is why the suite of regulations that you will have before you will attempt to say that there is a general consensus. There will almost certainly be areas where people do not agree, but I am afraid that that is just the nature of planning.

10:15

**George Eckton:** In general, COSLA and all our member local authorities supported the 2006 act. We feel that there is an on-going process of culture change, which requires that not just the planning authority but all parties and communities in the process change their cultures.

Our members would argue that we are improving and that the number of up-to-date development plans is substantially different now, compared with five years ago. It will be an on-going process, and we all recognise, as planning authorities, that we can continue to improve. However, we also need the continued improvement of everyone who is involved in the planning system so that applications that are submitted to planning authorities are complete and can be dealt with timeously. The clock starts on their submission, so when they are submitted incomplete they contribute to statistics that seem to show that we are not determining applications quickly enough.

Jenny Hogan made a point about consistency. Local planning is a local democratic process, and there will be numerous material considerations that those who take the decisions have to take into account. I realise that around the table there are several councillors who will be aware of the need to recognise local democracy in action and the views of communities. That may occasionally lead national policy to chime off against local views.

**Allan Lundmark:** I hold strongly to the view that if we are talking about efficiencies in the planning system we should not talk just about speed. I agree entirely with Craig McLaren's comments.

What we are looking for is predictability and consistency in the system. I accept George Eckton's point, but we are arguing for consistency of approach in the processing of applications and not necessarily for consistency in policy across all 34 planning authorities. We accept that there should be variations, but we need consistency in how our applications are processed. It is also a question of proportionality.

We should also recognise that, when we submit a planning application in Scotland, we are probably dealing with a service that is significantly underresourced and, as a consequence, arguably

underconfident in how it deals with planning applications. Most of the applications that my members submit will be, if not major in the legal sense of a planning application, then significant in the impact that they would have on communities. It is imperative that planning authorities give due consideration to the myriad of policy issues that are raised when a housing development proposal is placed before them.

I repeat that we need a system that is far more predictable and consistent, and which is proportionate in what it expects of developers. I believe that we have an opportunity to deliver such a service if we look at the option that is available to planning authorities of entering into processing agreements. When processing agreements have been put in place to tie not just the planning authority but all the agencies and individual departments in that authority to a particular timescale, our experience has been extremely positive.

I will touch briefly on the resource issue. We would be very wary of any attempt to increase planning fees because of the impact that that would have on our businesses. That said, if we could deliver a system that is far more predictable, consistent and proportionate, we would certainly play our part in funding it.

We would go slightly further and say that, if we were to do that, there would have to be recognition that planning authorities are providing a service to us at the point at which we hand over a planning fee. We are purchasing something; we are clearly not purchasing a planning consent, so we are surely purchasing a service. We must therefore surely be entitled to have the usual customer-care standards applied to delivery of that service. If such a service could be put in place, the private sector would pay to have it delivered, but we have to reconsider the quality of that service.

**The Convener:** I am sure that we will come back to the specifics of fees shortly.

**Kevin Stewart:** Mr Lundmark mentioned predictability. There is not very much predictability at all in planning.

I turn to whether the current system balances the right of objectors in communities to challenge planning decisions with the rights of developers. From experience as a north-east MSP, I have seen the on-going debacle of the Aberdeen western peripheral route, in relation to which there has been an inquiry, and a number of court cases are now taking place.

In my opinion, the situation is that there are professional nimbys. It has probably gone beyond that now and there are folk who I have heard termed BANANAs—build absolutely nothing anywhere near anything. That obviously causes great chaos when it comes to driving things forward.

I would like to hear comments on the balance between the rights of objectors in communities and the rights of developers when it comes to planning decisions being challenged. I am interested in the opinions of folk on whether a public inquiry should be the final place for a decision and whether, after a decision is taken there, that should mean that the matter has been dealt with.

**The Convener:** A couple of folk still want to comment on the more general issue, but Kevin Stewart has thrown in that question.

**Alex Mitchell:** I will first pick up on the Planning etc (Scotland) Act 2006 side of things. CBI Scotland obviously supported the 2006 act and engaged with the Government in the legislative process. We acknowledge the efforts of some national authorities and bodies, which have improved efficiency through that act, but there is still uncertainty and delay in the planning system.

My other point is that the 2006 act is only a tool for engaging in what we all do. What should have gone along with the new planning system is what was called cultural change. We feel that that has not yet materialised across the board among the many agencies and local authorities that implement the act.

**Fraser Carlin:** I will quickly pick up on some of the points that have been raised. I will probably also come back to the community engagement element.

Heads of Planning Scotland definitely welcomed the 2006 act and we have sought to embrace it and to work more closely than we did in the past with the Scottish Government and with industry. I welcome the comments that have been made by the house builders and industry representatives on the panel.

It is a challenge for planning authorities to achieve consistency, because local decision making is, by its very nature, local. It still has to be a democratic process and it has to be up to local members to make decisions that are best for their areas. However, we are looking to put in place frameworks that will allow us to improve on performance, to build in culture change and to examine how we can engage with communities. That element is the challenge to us when it comes to major applications, when communities do not feel that they are included in the decision-making process.

From our perspective in local authorities, if a development is contentious and people have the opportunity to put forward their objections to it, they will pursue every possible avenue. What the

planning system has to have in place is a framework that ensures that we have addressed the concerns of communities. It must be a positive framework that recognises the needs of communities and the needs of industry. We have to work very closely on that; I would like to think that we are. We want a planning system that delivers on the economic priorities in the Scottish Government's economic strategy, which was published yesterday.

The challenge is going to be how we engage with communities in a way that does not slow down the development process to the point at which nothing happens.

**Mark Griffin:** You referred to pre-application discussions and engagement. All too often, the people who turn up to those engagement opportunities feel that the developer is taking part in a tick-box exercise; the developer gets the pre-application discussion out the way and can then carry on with its application. How can we strengthen the role of the people who come to make their representations at pre-application discussions?

**Fraser Carlin:** That is a perennial challenge that every public body and organisation faces. Where the community are happy, they do not turn up. Where they object, they might turn up but feel as if nobody is listening to them.

A process exists for every major planning application. There is a 12-week consultation period, which lies with the industry, when it can engage with members of the public. From a personal perspective I say that I am sometimes not too sure that the industry is geared up to take advantage of that 12-week period in which it can try to get active in communities and sell the message about what the proposal is about. The danger is that communities sometimes see proposals almost at the last minute, and feel that it is a fait accompli and that the decision has been made without their input. The benefit of the 12-week process is that it is not about the council, the Government or the public sector; it exists for the industry to engage with the community and, if it can, to get the community on board.

**Professor Bramley:** First, as a general point, I welcome the legislation and the new planning system, which has many features that I strongly support, such as longer-term plans and the vision for making places where people will want to live, which is the key not just to social happiness but to economic development. The basic principles are right.

However, I worry that—as is so often the case in planning—some of the problems will be to do with implementation, rather than with the basic policy. Allan Lundmark referred to resources in the planning system, which is an issue that we are conscious of, particularly in relation to the difficulty that our graduates are facing in finding jobs, and in relation to the cutback in provision and staffing levels in local government. I think that local government's ability to carry out that key role will be challenged.

I want to respond to the points about nimbyism and BANANA-ism. Local attitudes to development are very important. Parliament might want to congratulate itself on avoiding some of the very risky and not fully thought-out reforms that are being partly pushed through south of the border, which are—shall we say—taking quite high risks and generating a perhaps hysterical and ill-informed debate.

I can present a piece of evidence that Scotland does not have as severe a problem with nimbyism as exists in England. I have been analysing the British social attitudes survey, which shows that Scotland is the only region where there is a slight majority of people in favour of local housing development, rather than opposed to it. You are starting from a somewhat better place, but there are still areas in Scotland where there would be a minority, rather than a majority, in favour. Typically, those are areas where we need more housing development. It is still a challenge to get sufficient support for local authorities to feel comfortable about approving development. That is key.

The evidence from that survey also shows that people are more willing to support development if there can be accompanying social and green space and transport facilities. It is important to carry through the link between the provision of those facilities and infrastructure and new development. I am not 100 per cent convinced that the arrangements in relation to planning agreements and so on give certainty that that can happen, which is important.

People are more willing to support development if the type of housing that will be provided is what they think is needed in an area. For many people, that will include affordable housing and perhaps smaller starter homes, rather than big mansions and five-bedroom houses. There is clear evidence of that in the British social attitudes survey. We need to give local authorities the ability to bring that about in their decisions. There is an important issue about the use of the planning system for affordable housing. Things in the development industry have been thrown awry by the very prolonged recession, but planning is about the longer term. We need to look to the medium and longer terms, when there is not going to be much public money for affordable housing. We need to use the planning system positively to deliver an adequate amount of affordable housing.

10:30

**Jim Mackinnon:** I want to make a couple of points on what has been said before I address Kevin Stewart's point. There has been substantial progress on development plans. There are twice as many up-to-date plans as there were when we started the planning reforms. Local authorities can take significant credit for that.

I absolutely agree with the points that have been made on processing agreements. When the word "agreement" is used in planning, people sometimes think of a legal agreement but, essentially, we are looking for a project management tool that should be adopted across Scotland for major applications.

The point about culture change has been made. Mr Swinney made it clear that he did not see planning reform being fundamentally about legislation. He said that he saw it as being about culture change, and that he believed that that applied to all of us—the Government, local authorities, agencies and the development industry.

We produced the "Delivering Planning Reform" document, which was co-signed by local authorities, Homes for Scotland, the CBI and others. It focused on four themes, the first of which was proportionality. As Allan Lundmark said, there is just far too much paper. We reduced the amount of planning policy from about 400 pages to about 50. The other themes were a new approach to advice; greater efficiency in planning; and building up the skills base, to which ministers continue to attach a great deal of priority.

I am always intrigued by the word "consistency". It is like "strategic"—it sounds right, but what does it mean? Some people assume that consistency means simply the rigid application of rules. I think that the word "predictability" is much better. The development industry and communities have a right to expect predictable outcomes.

Mr Griffin raised some interesting points about community engagement. Far too often, whether it is the planning authority or the developer that is proposing something, people feel that community engagement is merely a tick-box exercise. Last year, we established the sustainable communities initiative, which explores how local communities see the area changing and developing rather than presenting them with a plan and asking them what they think about it. That remains a priority for us.

Mr Stewart raises some justifiable and understandable concern about court cases. I assure the committee that that issue is on ministers' radar. It is interesting to reflect on the fact that there are relatively few court challenges in Scotland. We seem to have had quite a few over the years, and last year we were successful in withstanding a court challenge against the Fife structure plan, which had gone from the inner house to the outer house—or the outer house to the inner house; I forget. However, there is a sense of frustration that, after the open process of the public inquiry has been gone through, there are still opportunities to successfully raise challenges in the courts. That concerns ministers, but developments such as protective court orders might make it easier to raise a challenge. There are also fundamental issues involving human rights and the Aarhus convention that give people the opportunity to raise challenges in the courts. It is an issue of concern, but you can rest assured that it is on ministers' radar.

**Bill Walker:** My initial question has been answered to a large extent by Mr Mackinnon, but I would like to reinforce what Kevin Stewart said. Obviously, we aspire to the most efficient planning system that we can get at a community, local government and national Government level. However, something is wrong if, even following a public inquiry, an issue can drag on for years—Kevin Stewart knows exactly what I am talking about. I am pleased to hear that the issue is on ministers' radar. We must consider individuals' feelings and wishes but, when a huge project that has the support of 98 per cent of the people can be frustrated by one or two determined people, there is something wrong in the system.

**Kezia Dugdale:** Jim Mackinnon talked about the amount of up-to-date plans. Yesterday, I met the Federation of Small Businesses to talk about the Edinburgh trams project—you can imagine that that was quite a controversial topic. It was pointed out to me that the south-east Scotland strategic development plan, which was updated in July, contains at least five references to the tram going to Newhaven, which is not a realistic proposition. The plan might be up to date, as of July, but it is not realistic, as it has been known for about 18 months that the trams will not be going to Newhaven.

Businesses and the public see that there is a disconnect—to use Jenny Hogan's word—between reality and what is in the plans. Are the plans flexible enough? Do they engage properly with wider issues, such as the realpolitik of what is happening in the economy?

**Jim Mackinnon:** One would certainly hope so. It has been pretty clear where the trams will not go for some time, so we will happily take that up with the SESplan team. There have been many opportunities for councils and councillors to engage in the process, but I will certainly communicate that back to the SESplan team.

**James Alexander:** I just wanted to follow up on the discussion about cultural change, which is where our members have seen some of the

greatest successes in achieving a timely outcome to planning applications. There has been a change in culture in local authorities, other planning bodies and Government agencies, which has resulted in their having pre-application dialogue with developers to iron out many of the issues that would otherwise have caused delay or great difficulty in the planning application process. That is where we should be moving culture-wise, and we are doing so. Such dialogue is important because it is clear that, by discussing plans and proposals, different issues and concerns can be ironed out.

The problem is that—this relates to what Allan Lundmark said—as resources are reduced and things are cut back, that dialogue is one of the first things to go, as people move back to concentrate more fully on the formal process of processing applications. Such dialogue, which is not part of the formal process, is being put to one side. We want to stress that that dialogue is proving really important in achieving speedy resolutions in the planning system and in helping developers move through it. As planning is—or should be—a key enabler of economic development, we think that that is something that should be resourced effectively.

**Mark Griffin:** Mr Mackinnon mentioned the progress that has been made on local development plans, but how are the strategic development plans progressing? An issue that has been flagged up to me is the representations that have been made to the strategic development planning authorities by the built environment directorate. Glasgow and Clyde valley strategic development planning authority members are intensely unhappy about those representations and feel that they are inappropriate, given that the same directorate will be asked to approve the strategic plan.

**Craig McLaren:** I will leave the SDPA stuff to someone else.

I am keen to make two points, the first of which is on community engagement. It is important to realise that community engagement has been in the planning system since 1967—it has been with us for a long time. Not a single one of the planners I know and talk to is anti-community engagement. They all see it as a key component of what we do.

That said, we need to watch the tendency to think about community engagement as the neighbour notification process in a planning application. We are trying to push community engagement much more upstream as part of the process of ensuring that planning is much more plan led. That involves engaging communities in creating a positive and proactive vision for their area, instead of just reacting to things. That is a key mechanism that we have been trying to introduce in the planning system, and it relies on the planning profession providing the context for that to happen. It is important to bear that in mind.

Linked to that is the culture change that several people have referred to. Our membership embraces the public sector, the private sector, the voluntary sector and anyone who is a chartered planner in Scotland. We have been working with our membership to ensure that the system is seen as being much more facilitative—as an enabler that can help to deliver things such as sustainable economic growth. It is important to bear in mind that we are working with organisations such as the Scottish Government, the Improvement Service, Heads of Planning Scotland and COSLA to ensure that our members do that and that planning is positioned in such a way that it can act as an enabler.

**Ruth Davidson:** I have a question on the e-planning system. There has been much discussion this morning about having consistency and predictability of process, if not of outcome. Although the e-planning tool does not take in the City of Edinburgh Council, it takes in every other council. It is one of the things that were designed to give people predictability and uniformity of process. However, it takes away some of the dialogue aspects to which James Alexander referred. Are people using the e-planning system? Is there a way to use it more and better to help to take funding burdens off planning departments, which people perceive to be stressed and under pressure?

**Jim Mackinnon:** I will deal with Mark Griffin's point and with Ms Davidson's point on e-planning. On strategic development plans and issues of progress, I am not sure whether Mr Stewart agrees, but I think that the Aberdeen city and shire structure plan is a very good example of what a strategic development plan should look like. It is 30 pages and, when it was submitted, we approved it without any modifications. I know that there are issues with translating that into the local development plans but, as a process that engaged business and local communities and as a product that is generous in land allocations and sets a clear way ahead, with a clear understanding of the balance of development between the city and the shire, that development plan is a model. I see good progress on TAYplan as well, but there have been concerns regarding not just the content of SESplan but the speed with which it has been drawn up.

On the Glasgow and the Clyde valley strategic development plan, a number of people here have talked about the importance of early engagement, so why on earth would the Scottish Government and its agencies not engage early with that plan and identify areas of concern? One of those,

which I am sure Homes for Scotland has, is to do with effective land supply. We have raised the issue of whether there is effective land supply in the short term, which is right and proper, because it is a key element of Government policy. The second issue, as I recall, relates to issues that Transport Scotland raised. Transport and planning are inextricably linked, so it would be extremely negligent for the Government not to raise transport issues of concern. The idea is to raise issues in order to have them addressed and, we hope, make the process of examination and approval much more streamlined than it might otherwise have been.

It was predicted that 6 per cent of planning applications would go through the e-planning system, but the figure is now over 30 per cent and I believe that it is over 40 per cent in some authorities, such as North Lanarkshire, and over 50 per cent in Loch Lomond and the Trossachs. We therefore regard the e-planning system as a tremendous success. There should be efficiencies and there are cost savings from the system. For example, for a major company submitting planning applications across Scotland, it is much easier to do e-planning than it is to fill in different forms for different authorities.

What e-planning does for community engagement is seen as one of its great strengths, particularly in remote rural areas, where people can check on the progress of an application online. One of the frustrations that people used to have, for example, was that they might do a round trip of 50 or 100 miles to see a planning application at the local authority but find that it was not there and they could not see the plans and drawings. Now, they can check online, see the progress of the application and when consultations are coming back and look at committee reports in advance. I regard e-planning as a success not just in terms of its uptake—we continue to drive that forward—but in terms of the opportunity that it provides for communities to engage and see a much more transparent process.

**Andy Myles:** I commend to committee members the definition of "community" in the recently published Christie commission report, which said that there is a vital distinction between communities of place and communities of interest, and that both should be taken into account in our politics broadly. I represent communities of interest rather than communities of place, but I think that I can say some things on behalf of both types of community with regard to objectors.

The balance between objectors and developers is very important. We pressed for a limited third-party right of appeal during the passage of the bill that led to the 2006 act, but we did not win that case with Parliament at the time, and we are certainly not pressing for it again. The question about communities remains—it goes back to Allan Lundmark's point about resourcing. LINK agrees entirely that the resources in officialdom in the planning system need to be reinforced and that we suffer from a lack of planning expertise. I hope that local authorities will consider that, particularly in the environment field, which has not been hugely well resourced. Please also consider the resources that are available to the inchoate community of place, which does not tend to be particularly active until it reacts, as somebody said. Communities of interest have resources—the heads of our planning task force and our local governance task force are with us today—but we do not have huge resources and we do not have the same resources as official bodies and developers have to deal with cases. The committee should bear resourcing in mind.

10:45

It is quite important to remember that court cases are not taken often. NGOs have brought cases to test the law. Taking a test case involves testing the law to ensure that the fundamentals of our democracy and of accountability are put in place. A body does not take a test case for the hell of it or for a laugh; it does so because it thinks that an important point of law is at issue and because local and national Government are supposed to get the law right.

It is easy to harangue somebody who takes the Government to court—I have been in that position with a non-governmental organisation. The Government boycotted the Royal Society for the Protection of Birds Christmas party one year because we had dared to challenge it on a point of European law. The RSPB won the case and was right to say that the Government had implemented the law wrongly. Good cases can sometimes make bad law. Taking one case out of the ordinary is not necessarily the best thing to do.

Our members in Scottish Environment LINK are involved with hundreds of planning cases every year that involve renewables developments across Scotland and other issues that affect the environment. As I said in my introduction, my members are determined from the earliest stage in a plan-led situation not to get into disputes. People in communities of interest do not want to get into disputes—we want a system that is predictable and that goes forward. However, I caution people against vilifying somebody who takes a test case.

**Jenny Hogan:** I will pick up on points that have been made, including the one that Andy Myles made about accountability, which covers several issues. I agree with what Allan Lundmark said about processing agreements and about industry helping to fund the service, as long as it is

predictable. However, the issue is the accountability of processing agreements. For example, if a local authority does not stick to what it says, where is the accountability?

A long delay has applied to development plans and updating supplementary guidance, but such documents are important. If a local authority's local development plans and guidance do not tie in with national guidance, the only place to test those documents is on appeal or in a public inquiry, which involves a painful, costly and horrible process that no one wants to use.

The new local review boards are a recent change under the 2006 act. They have been in place for a little while and we are starting to see decisions that have been made in those forums that are not necessarily relevant even to planning and which are based on information that is not even factual. What happens after that stage? The developer has nowhere else to go. Many questions must be raised about local review boards in general.

**Kevin Stewart:** I disagree with Mr Myles on test cases because I believe that, in some cases, the courts are being used to impede development. Mr Mackinnon rightly pointed out the value of the Aberdeen city and shire structure plan and how it has worked extremely well with a huge amount of input from people across the board. However, that plan will be difficult to implement without one of its key elements: the Aberdeen western peripheral route. Folk around this table who have had involvement in such matters will know that, without a major piece of infrastructure, it will be impossible for Mr Lundmark's colleagues to build housing in certain places, and then the entire structure plan will begin to fall apart.

We have had a huge amount of input, a public inquiry and a test case with an appeal by the objectors being thrown out, and now we are going back again to the Court of Session. That is similar to the situation with the Fife structure plan. Like Mr Mackinnon, I do not know whether it is the inner or outer house. It is in, it is out—it is a bit like the hokey cokey. I believe that there comes a point at which a line should be drawn and we just need to get on with it.

**George Eckton:** On Jenny Hogan's point about local review bodies, local members have found those to be useful forums for the reconsideration of applications. I would be interested to know about specific cases in which information was deemed not to be factual but, in general, planning conveners and members have found them to be extremely useful tools to streamline the planning process.

**Fraser Carlin:** I want to pick up on a point that Mr Griffin and Ms Davidson raised. The Glasgow and Clyde valley strategic development plan is on timetable, but we are going through a discussion with the Scottish Government and house builders on the housing allocation. That is a good and honest debate to have at this stage. We need to have that debate, as it allows members and the Government to make a decision on those important issues. The challenge that the industry faces is that it must engage in the debate honestly and recognise that the decision has to be in the wider national interest and not just a particular sectoral interest. The discussion at present is honest and up front and it is a good debate to have, but we must ensure that it reaches an outcome that benefits the Scottish economy and wider population rather than just a particular sector.

My authority is one of the ones in which more than 40 per cent of applications are e-planning ones. That approach is welcome and it opens up resources and allows us to be a face-to-face organisation. Last week, I was at a meeting with a community council that uses the web to look at plans rather than having to be bombarded with information. It is a good means of communication, but that level of communication costs and takes a lot of staff time when the resource that local authorities have is limited. The maximum fee for a planning application in Scotland is £14,000 whereas, in the rest of Britain, it is a quarter of a million pounds. There is a large disparity in the income that can come from planning fees.

The industry does not want an increase in fees, but there might be opportunities for it to have more effective engagement with communities. Obviously, the difference between what is paid to a council in Scotland and what would be paid in the rest of Britain is a huge chunk of money. That could be used to make the industry's community engagement more effective and honest.

**The Convener:** Before we continue, I ask everybody to steer away from specific planning applications, and particularly ones that are live or going through the courts.

**Jim Mackinnon:** It is a bit unfair to make accusations about local review bodies, as they are a fantastic innovation in the Scottish planning system. Down south, there is a debate about localism but, in Scotland, we have given local members who are accountable to their electorate control over decisions on planning applications. That is a fantastic step forward, and the councillors have discharged their responsibilities effectively. We should remember that they are being asked to review decisions on applications that officials have recommended be refused planning permission. In one in three of such cases in Scotland, the members overturn the officials' decision. We can always look for improvements to

process but, as an innovation in Scotland, the local review bodies are extremely welcome and ensure that decisions are made at the right level.

**Mark Griffin:** I could be accused of being biased as I am a former convener of a local review body. In North Lanarkshire, all the members of the review body undertook a lengthy training programme and took their responsibilities very seriously. I thought that it operated effectively.

**Andy Myles:** Our members are all for getting involved in planning decisions, achieving sustainability and getting environmental consideration right at the earliest possible stage—the planning stage—rather than at the last stage. The vast majority of court cases on planning decisions are brought not by objectors but by developers. I hope that that is taken into consideration. More than 90 per cent of the legal cases that are brought are not brought by objectors. Generally speaking, people who object usually have good grounds for objecting.

**Allan Lundmark:** I return to a point that Ms Dugdale and Kevin Stewart raised on the content of our emerging plans, because that is what we are most concerned about. Jim Mackinnon also alluded to the point when making his remarks. One of the problems that we face is that far too many of our most recently approved development plans and emerging strategic plans rely on assumptions that were relevant during the good economic times up to 2006-07. They rely on so-called strategic land releases that require vast amounts of private sector investment in physical and community infrastructure to open the sites up.

The funding model that existed up to 2007 is no longer available to us and that land is no longer capable of being promoted certainly for the next five years, probably for the next decade and maybe even beyond. We therefore need to address urgently the issue of an alternative land supply that the private sector can promote in the next five years. SESplan and the Glasgow and Clyde valley plan are overreliant on strategic releases. The Glasgow and Clyde valley plan says that no additional land is required until 2025. Well, in parts of the Clyde valley, the industry will run out of effective housing land within the next five years. The reliance in SESplan on strategic development sites will cause major problems.

Strategic development plans could be put in place that hamper the local development plans from delivering an effective land supply. Jim Mackinnon is right to point us in the direction of the Aberdeen and Aberdeenshire plan, which rose to the challenge and delivered that generous land supply. There are issues around how that will get translated into local development plans, but we will deal with that, and I respect the convener's wish not to talk about live matters. We need to ask whether our planning authorities are relying on a land supply that was delivered during the good economic times but is no longer capable of being delivered in the current tough economic circumstances that we predict the industry might face for the next decade.

I want to talk briefly about the point that Fraser Carlin raised about engagement. As an organisation, we do not take issue with any of the challenges that have been laid before the industry on early community engagement. At the most fundamental level, you have to ask why we would not engage with communities. After all, they are our customers and clients. We are selling houses to the very people who have concerns about our proposals, so why would we not engage with them? Fraser Carlin is right to say that we need to find new ways of doing that and of addressing the cost issues. Alongside that, we should also address some of the other costs that planning authorities will require to incur when promoting a planning application.

11:00

If one of my members submits a planning application for between 30 and 50 houses or in excess of that number, they are required, as they lodge it, to submit up to 23 or 24 impact assessments to back it up. One of those—the environmental impact assessment—is a statutory requirement, but the others are not. Those studies have one purpose only, which is to assist the decision maker in the planning authority to arrive at a decision. They do not add value to our projects or to the product that we bring to the site. They are a cost that sits alongside the planning application fee.

I am happy to sit down with my colleagues in Heads of Planning Scotland and the director of built environment to examine whether those costs are being incurred for the right purpose or whether there is a more effective way of doing things. If that includes an examination of whether we need to shift the balance between the money that we spend to assist the planning authority and the money that we commit to community engagement, I am more than happy to take part in that discussion.

**Jenny Hogan:** I want to return briefly to local review boards. I agree with what Jim Mackinnon said about local review boards existing to make the system more efficient. I have no qualms about that. We can see that they are useful for minor, fairly small-scale developments. The comments that I make on the local review boards are more specifically about the field of renewables, particularly the fact that a number of quite significant and complex renewables projects will

fall into the local category and will therefore be assessed by the planning officer initially.

We have discussed the lack of resourcing of planning departments and, in some cases, their lack of awareness of or expertise in technical issues to do with renewables. If the planning officer refuses the application for whatever reason, it will go to the local review board. However, I am afraid that we have seen examples of the type of issues that I raised earlier—comments being made that are not relevant to planning and non-factual information being used—which mean that a project has not been given a fair hearing, and that is the end of the process. There are some genuine issues with renewables projects in particular, which are perhaps more to do with the hierarchy among developments than the local review boards in some cases.

**Ruth Davidson:** We have spent much of today talking about the 2006 act and its implementation. I would like to take us slightly further forward on to the national planning framework. It needs to be updated every five years and is due for another update in 2014, during this session of the Parliament. Are there any changes that committee members or witnesses want to see? Should anything else be included in the updated framework?

**David Torrance:** Additional enforcement powers conferred in the 2006 act were not implemented until 2009. Why did it take so long for them to come into force, and what impact has that had on the rolled-out and revised system? Many local authorities have real difficulties with enforcement, especially when conditions are breached time and again by individuals rather than major companies. Do local authorities need additional powers? Breaches of conditions are ignored time and again.

**Andy Myles:** There are various things about national planning framework 3 that we have concerns about. One is whether the designation of developments as national developments closes down scrutiny of the planning need for such developments. Also, we very much hope that the 60 days' scrutiny period that is written into the 2006 act does not overlap with Christmas and new year again—it was hell when that happened the last time.

I can see exactly where Allan Lundmark is coming from with regard to assessments not strictly adding value to planning. Nevertheless, an environmental impact assessment, an energy assessment or whatever can add value. If homes are being built and one ensures, as a result of an environmental impact assessment, that they are not built on a flood plain, the social, environmental and economic consequences of that externality can be vast. I give that as a simple example. Indeed, that can affect the value of those homes in the future, as their insurance costs, for example, will be affected.

Therefore, although they may be externalities, significant economic and financial impacts result from environmental impact assessments or, at the local government level, strategic environmental assessments. Huge costs can be saved for people, businesses, the economy and local communities through conducting the assessments carefully and considering them in terms of value. That value may be external to the accounting costs, but those externalities are important.

**James Alexander:** On the third national planning framework, we want a system to be promoted, on an on-going basis as part of the Government's core purpose, so that the framework's foremost purpose is to support sustainable economic growth in the planning system in particular. The SCDI supports major infrastructure projects, but we want to see them prioritised, highlighted and reviewed to ensure that the projects that are put forward and prioritised will promote and prioritise long-term growth as well as provide short-term productivity gains. Examples might include digital broadband infrastructure projects and major transport projects. We see those areas as critical for the future, and we have called on the Government to prioritise capital spending in the spending review and to ensure that it remains a priority.

**Craig McLaren:** I would like to make a brief point about NPF 3. A key point is that the NPF 2 document is really good, and we should build on it. Other parts of the United Kingdom are clamouring for documents like it. It is a great companion document to the Scottish planning policy and to the raft of guidance and advice that goes with that.

On the issues that the planning profession will face over the next 10 to 15 years or so, the renewables targets will be important. I wonder whether there is a role for NPF 3 in trying to set spatial priorities that deal with some of the renewables targets a bit more explicitly, and in setting out where we can and cannot do things.

**Allan Lundmark:** I would like to pick up on two points, the first of which is Mr Torrance's point about enforcement. Homes for Scotland believes that enforcement action should be robust. We would never tolerate any of our members breaching a planning condition, and we have no evidence that they have ever done so. If a condition is found to be unworkable once a project gets on to site, there should be an immediate return to the planning authority to have the matter resolved. There should never be a case in which a member of my organisation has breached planning conditions, and I have no evidence of such a case. We should be robust on that. If we

are not rigorous in policing the implementation of planning consents, our communities will lose absolute faith in the planning system.

Secondly, on Andy Myles's point about impact assessments, I hope that I said that most of the studies do not add value. I hope that the *Official Report* will say that; if it does not, I correct what I said. I am prepared to concede that some environmental impact assessments add value; indeed, I can point in the direction of a project that was dramatically redesigned and a higher-value project was created as a result of an impact assessment.

The point that I was trying to make is that many of the studies are carried out as a matter of course, as they are required to support planning applications, without any regard to whether their content will assist the decision maker. I would far prefer a system in which we sit down with the planning authority and recognise at a very early stage the big impact issues that need to be addressed—the issues that the planning authority must consider in assessing the proposal. In delivering the investment that we automatically put into all of the studies, we would then go and carry out highly targeted impact assessments, or perhaps even just one impact assessment.

That would seem to be a far better way of helping us to design a solution to some of our problems. It is ludicrous, but we can carry out a drainage impact assessment, a transport impact assessment and a water supply impact assessment, all of which deal with the same environmental issues but can deliver different solutions because we have gone to specialist providers of services. It would be better to sit down with the planning authority early in the process and say, "These are the issues we believe need to be addressed in your assessment. Do you agree? What do you need to know before you can arrive at a decision?" Then we could carry out the impact assessments to help to deliver the results of that decision.

**Jim Mackinnon:** I want briefly to pick up on four issues—the court case issue, the national planning framework, appraisals and enforcement. I do not accept Andy Myles's point that 90 per cent of court cases come from developers, but I do agree that court cases can be important in clarifying areas of law. I guess that he will be in court with us defending a decision that we took recently in relation to the significance of special protection areas in planning decisions.

Ms Davidson raised an important point on NPF. We hope that we will have the monitoring report for NPF 2 before the committee in the autumn. That will be a good time to discuss with the committee what it regards as the priorities for NPF 3.

NPF is now on a statutory basis. It sets out a spatial strategy for Scotland and it identifies national developments, which are, in essence, developments in the field of infrastructure, transport and energy that we think Scotland needs.

A former minister once said to me that if we want a debate about big infrastructure projects, Parliament is the best place in which to have it. It would not be a technical exercise; judgments would have to be made by people who have been elected to represent their areas and, as Allan Lundmark was saying, the details could be resolved later. However, questions of principle will arise, and only elected members can take those at national level.

Mr Torrance raised an important point on enforcement. Enforcement is seen as a Cinderella part of a Cinderella service in local authorities. We strengthened the enforcement provisions in the 2006 act. People wanted the new development planning system to be introduced, so enforcement was a lower priority, but the provisions are in place.

Issues arise over whether enforcement action should be taken. People often attach 50 conditions to a planning application as a sort of latter-day virility symbol, but it might be better to attach three conditions and then monitor them effectively. An issue of trust arises among the public if people see that attached conditions are not enforced. At the meeting of planning conveners last week, we held a session on enforcement with a procurator fiscal, considering the challenges when enforcement leads on to prosecution. Enforcement is a live issue and, as Allan Lundmark said, it is important in inspiring public trust and confidence in the planning system.

I am sympathetic to views that have been expressed on appraisals. I think that Fraser Carlin mentioned top planning fees of £16,000, but at a construction summit in Inverness earlier this week I heard of someone who paid almost £90,000 for an environmental appraisal. The problem is the cost and the multiplicity. There is also the unpredictability—you could do lots of work and still be left with a refusal. It would be much better to have the issues flagged up, a decision taken in principle and then an appraisal targeted to do many of the things that Andy Myles talks about and to find solutions. It is a question of taking a problem-solving approach to regulation. Money saved could go into the quality of the built environment.

**Alex Mitchell:** Allan Lundmark talked about the reports that have to go along with development proposals, and themes arise to do with the national planning framework and the culture change involved in the open-for-business attitude.

By and large, most of the documents are geared towards making a negative assessment of any proposals for development. The CBI feels that balance is required, and that more weight should be given to economic considerations. Many Government policies cite sustainable economic growth as a key priority, but what is missing in the assessment of development proposals is a proper balance of all the negative assessments with the positive things that developments can bring about. Also missing is an articulation, in the public forum, of how the positive aspects are assessed as part of the overall development plan and planning application process.

**The Convener:** I propose to bring this session to an end unless anybody has a burning point that they feel has not been covered.

**James Alexander:** The proposed changes to the planning system in England were mentioned. Although the SCDI does not take a view on those changes or have any knowledge of how they might end up, this committee will have to keep an eye on what is happening in England and consider what any changes might mean for Scotland.

**The Convener:** I thank everyone for their contributions. This has been a useful session and we will consider the evidence later.

11:15

*Meeting suspended.*

11:23

*On resuming—*

# Petition

## Planning Circular 3/2009 (PE1320)

**The Convener:** Agenda item 2 is an oral evidence session on petition PE1320, in the name of Douglas McKenzie on behalf of Communities Against Airfield Open Cast. Members have received a paper from the clerk setting out the background to the petition. Three witnesses will contribute—George Eckton, Craig McLaren and Jim Mackinnon. The objective of the session is not to debate the merits of a specific planning application but to look at the broader issues that the petition raises about the planning system in Scotland. I invite the witnesses to make an opening statement.

**George Eckton:** From a local authority perspective on the issue raised in relation to planning circular 3/2009 and in the committee paper, the principle of further tweaks to the planning system—not specifically articulated in terms of the major developments they relate to—appears to go against the ethos of the current planning reforms, which is to bed in minor tweaks and seek to move things forward.

Issues have been raised about a democratic deficit with regard to applications that lie near boundaries of adjoining local authorities. The majority of our members would see custom and practice, in terms of the consultation that they undertake with their neighbouring authorities, as dealing with the majority of such applications. The new strategic development plans, and their more strategic focus and highlighting of major applications that might lead to such issues through the plan-led process, may in the future negate a large number of such applications and the issues that surround them.

**Craig McLaren:** I echo what the convener said about not commenting on individual planning cases but talking about the principles. Planning circular 3/2009 is all about trying to minimise the use of ministerial call-in powers, making what we do much more proportionate, and focusing on the national interest and areas of national importance within the context of the concordat between COSLA and the Scottish Government. We appreciate that planning authorities are required to give due consideration to all representations to planning applications, including those from outside their local authority area.

One of the things that we wondered about the principle of the case was that, when two authorities have different views, there is no higher body that can resolve a dispute, unless the case is

called in by Scottish ministers. That is where the democratic deficit claim comes in; people in a neighbouring authority do not have the means to elect or unelect councillors who have made a decision.

Of course, as George Eckton mentioned, a balance needs to be achieved between the speed of the planning system and the planning process and engagement and democracy. That is nothing new in the planning system, as I am sure everyone knows. We suggested a possible approach of introducing a system of referral to Scottish ministers that is based upon certain types of major planning applications being defined by the planning hierarchy as significantly contrary to the development plan and to which a neighbouring authority has objected.

**Jim Mackinnon:** Let us start with the law. The law on making decisions on planning applications is very simple. Planning applications shall be made in accordance with the development plan unless material considerations indicate otherwise. The first port of call is to look at the development plan, to see what it says, and then take into account lots of other things, such as the views of individuals and communities and the responses of statutory consultees, for example. Applications have to be considered in the round.

In theory, the Scottish Government can call in any planning application. If someone wants to build an extension to their house or a hot food shop, in theory the Scottish Government could call in the application. However, planning circular 3/2009 sets out the circumstances in which a planning application should be notified to Scottish ministers. We should be clear, though, that a notification does not actually mean a call-in; it just means that the application will be notified. The purpose of notification is not to take a decision one way or the other—it is about whether the application raises issues that ministers should consider. If it does, the case will go to the directorate for planning and environmental appeals, and it will invariably involve a public inquiry.

Craig McLaren and George Eckton have alluded to the changing relationship with local government, and the concordat, which is absolutely fundamental. It is about empowering and trusting local authorities. I understand that decisions on things such as opencast coal or energy from waste are deeply divisive. The idea that they might not be is fanciful, and it is understandable that people have strong views on such issues.

In circular 3/2009, we have three categories of notification: local authority interest cases; cases in which a Government agency has objected; and opencast coal cases that are within 500m of a community. The reasons for that are historic, because opencast coal has gone backwards and forwards before parliamentary committees over the years, and we just wanted to give communities that additional protection.

11:30

As I said, certain cases that come to our notice are not part of the notification direction and we can decide whether to intervene. Indeed, such decisions can be made pretty quickly. If we look at the committee report on a planning application, which is available to us through the e-planning system, and find, for example, that the applicant has ignored the development plan and community representations and that there has been a demonstrable failure of process, we can intervene. However, we have by and large found planning reports over the years to be very fair in recording the views of all sectors and providing elected members with a basis for local decisions.

I also said that we can issue directions quickly. In fact, we can issue a direction when the committee report is published or within minutes, almost, of a decision to approve something. For example, we recently issued a notification direction on a retail development in the green belt in Midlothian. The proposal itself does not fall within the categories for notification direction, but surrounding authorities—City of Edinburgh Council and East Lothian Council—objected and we acted very quickly. The application is now before ministers and we have to decide whether to call it in or return it to Midlothian Council as the determining authority.

It is quite difficult to have hard-and-fast rules on this. Although three categories of application must be notified, other applications can come on to ministers' radar. With the Midlothian one, Rhona Brankin, who was MSP at the time, asked to meet ministers to discuss it. We are aware of locally controversial applications but it should be pointed out that locally controversial applications are not necessarily of national interest. In any event, all this happens against the background of a local authority being empowered and entrusted to take fair and reasonable decisions.

**The Convener:** I acknowledge your comments about having notification instead of automatically calling in applications. However, to members of the public, it appears that if, say, Scottish Natural Heritage or the Scottish Environment Protection Agency objects, the application gets called in automatically. If an objection by a neighbouring authority automatically led to an application being called in, that might bridge the democratic deficit that has been mentioned.

**Jim Mackinnon:** It does not follow that applications subject to notification because of an

objection by a Government agency are called in. For example, in a recent case in Pitlochry, SEPA objected on grounds of flooding; however, on our own advice, we concluded that the planning authority had perfectly adequately weighed up the arguments for and against and that the application should not come before ministers. When Transport Scotland expressed certain reservations about applications in East Lothian, we chose not to call those in either. We have tended to call in applications for wind turbines where genuine concerns have been expressed about their impact on aviation safety or the safety of individuals and communities but, as I have said, notification does not automatically mean that the application is called in. Indeed, we are increasingly sparing in our use of the power these days.

**The Convener:** If a neighbouring authority objected to an application, would it be notified automatically to ministers?

**Jim Mackinnon:** It certainly would not be notified formally. However, if there were widespread concerns—and I suspect that in such cases the local authority would be responding on behalf of local people—it would certainly come on to ministers' radar. The local MSP would certainly, and rightly, be raising such matters with ministers, and we would discuss with ministers whether we should put out a notification direction. Essentially we are seeking to safeguard the process and ensure that the arguments have been properly and fairly represented. Without going into the detail of the application that I referred to, I believe that it was refused on seven grounds, including being contrary to the development plan and the impact on surrounding communities. In practice, the issue did not arise but had the planning authority been minded to grant the application for a development in an area of great landscape value, we might well have had to take a different view. We stand ready to do so, should the need arise.

**Kevin Stewart:** How often does a local authority object to something happening in a neighbouring authority?

**Jim Mackinnon:** I do not have the details. That might happen in the case of opencast coal, where vehicle movements might impact on the surrounding local authorities. The other situation would probably be major retail development, which might impact on existing centres. For example, when there were plans afoot to increase the retail floor space in Livingston town centre, the City of Edinburgh Council objected. That was notified and we did not call it in.

**Kevin Stewart:** A lot of major developments would in any case form part of the new structure plan, and it is likely that agreement will have been reached between local authorities to get to the stage of the completed structure plan. If it is so unusual for a local authority to object to a planning application in another local authority, when that happens there is probably something afoot and perhaps there should be an official notification and a call-in.

**Jim Mackinnon:** I understand that perspective. All I am saying is that notification gives rise to the expectation that there will be call-in, but we have other mechanisms in place to identify applications that have caused genuine concern. The question is, is the decision being taken at the right level and is notification or call-in justified in the circumstances?

**Bill Walker:** Another local authority is not the same as a Government agency; it is another local authority. I live on the border of a local authority area and what bothers me is that we want co-operation and culture change in that direction. Might not this automatic notification business just create a degree of, if not aggression, an almost threatening atmosphere between local authorities? Local authorities can already oppose or comment on something happening in another local authority. Is this not a wee bit excessive? It will create the wrong kind of atmosphere for all local authorities to work together. It seems a wee bit heavy-handed.

**Jim Mackinnon:** In Lothian, there is a mechanism when a local authority objects. That was the case with a retail development in Midlothian, which was referred to a joint committee of the constituent councils, which discussed and debated the development. It may or may not lead to tensions, although I suspect that that comes down to personalities and politics rather than the planning merits of the case.

Mr Stewart's perspective is perfectly legitimate, as is that of Mr Walker. The question is, should we put out a formal notification direction to require this, because that may raise unrealistic expectations about a higher level authority going over and referring back. Ministers want to ensure that the process has been fair, that proper account has been taken of the views of communities, whether or not they are in the authority area, and that proper account has been taken of the development plan and the views of statutory consultees and the local authority. I do not see it as a democratic deficit. Ministers want to ensure that the process is fair and transparent. Bearing in mind the tenor of the previous discussion, about speeding up the system, this would not speed up the system.

**Craig McLaren:** One of the things that we have been trying to do since implementing the 2006 act is to make the planning system more co-operative and less adversarial. I like to think that we would still have that process. We would see any proposal that we had put forward as being very much a last

resort, once we had been round the houses trying to ensure that everything that could be done was done to try to resolve the situation. Cases in which the power would be used would be few and far between.

**George Eckton:** For the majority of local authority applications, it is custom and practice to notify neighbouring authorities. As Mr Mackinnon says, retail is one of the principal issues. As a former planner, I know that there is potential for local authorities to go as close as they can to objecting in a discussion within a joint committee. That is part of the debate informing a strategic plan or a local development plan for that particular area or the wider area.

The number of applications that have significant cross-boundary effects can be quite large, but the question is whether they would have significant impact on the ground. The word "significant" could be framed in clear and consistent advice that would lead to the system being speeded up. You could question whether that advice could be given in that level of direction, with a degree of consistency that would enable the planning system to continue to function and speed up, as we would all wish it to.

**Craig McLaren:** I return to George Eckton's point about encouraging such discussions to be held earlier in the planning process. We are moving towards a plan-led system so, in the areas where a strategic development plan exists, I hope that there would be opportunities to ensure that discussions are held to provide a context for the decisions before a decision is made. As I said previously, I assume that the mechanism would be used sparingly and only in circumstances when, to be honest with you, there was gridlock.

**The Convener:** Is Bill Walker happy with that?

**Bill Walker:** Yes, thanks. That is good.

**Mark Griffin:** The petitioner raises a point about what constitutes a national interest, and asks whether the Government will provide more direction and guidance on that.

**Jim Mackinnon:** First, I will pick up on the point about early engagement and front-loading. Of course that is important; it is vital. However, there will be cases—members will all have them in their areas—in which a compromise will not be reached. People object, legitimately, because they are concerned about the environmental impact of a range of facilities and infrastructure, which we all know that we need, and they are very worried about the impact on their quality of life. I understand that, so we have to be realistic about the situation.

On Mr Griffin's point, the national interest does, of course, change. When we took through the 2006 act, the notification direction included developments that were contrary to the local development plan. There was a lot of concern among local authorities about the extra cost and bureaucracy that that would involve. As a Government department, we were quite nervous about the number of cases that would come to us.

In 2007, the new Government took a different approach to local authorities and the national interest was defined much more narrowly in terms of what was a genuine interest for the Government. The notification direction comprises three things. First, there are local authority interest cases. There has been suspicion—largely unjustified, I think—about local authorities taking decisions on land or property that they own and, for example, having cases referred to full committees. For example, I think that there is a sign on the Telford bridge at Dunkeld, and that is not really the way that these things should work. I am aware of a few cases in which there is a perception that local authorities' planning judgment was influenced by commercial considerations.

Secondly, there are cases in which a Government agency—let us be clear that these are Government agencies—thinks that there is an issue. Local authorities are entitled to take a decision that is contrary to the development plan and, as long as they go through a proper process of consultation, engagement and consideration, ministers have been clear that they do not believe that that should automatically be notified. However, if there is an objection from a Government agency, it should be. Having said that, notification does not actually mean call-in. We would sometimes not be comfortable with the objection and with putting the matter to a public inquiry.

The third thing is around opencast coal close to communities in which there are substantial on-going concerns about the environmental and health impact of opencast working.

That is, in a way, how the national interest has been defined. As Ms Davidson said when she talked about the national planning framework, there is also a series of national developments in which Government would have an interest. By and large, it is not about the Government trying to second-guess a local authority's decision; it is about ensuring that a proper process is in place that allows a fair and transparent decision to be made.

**The Convener:** As no other members have questions on the petition, I thank the witnesses for their evidence. The committee will consider at a future meeting the evidence that we have been given and the evidence that was given to the

Public Petitions Committee. I suspend the meeting briefly to allow the witnesses to leave.

11:44

*Meeting suspended.*

11:44

*On resuming—*

# Subordinate Legislation

## Local Electoral Administration (Scotland) Act 2011 (Commencement) Order 2011 (SSI 2011/277)

**The Convener:** Agenda item 3 is consideration of a commencement order. Members have a note from the clerk, which sets out the purpose of the order. We are required only to note the order, along with the comments that the Subordinate Legislation Committee has made to the Parliament. Are there any questions about the order? As there are none, are members content to note the order?

**Members** *indicated agreement.*

## Local Government (Allowances and Expenses) (Scotland) Amendment Regulations 2011 (SSI 2011/304)

**The Convener:** Agenda item 4 is consideration of a negative instrument. Members have a note from the clerk on the purpose of the instrument. No motion to annul the instrument has been lodged and the Subordinate Legislation Committee had no comments to make on the instrument. As members have no questions, does the committee agree that it has no recommendations to make on the instrument?

**Members** *indicated agreement.*

*Meeting closed at 11:46.*

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