



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 12 June 2013

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ECONOMY, ENERGY AND TOURISM COMMITTEE
19th Meeting 2013, Session 4

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*Dennis Robertson (Aberdeenshire West) (SNP)

COMMITTEE MEMBERS

*Marco Biagi (Edinburgh Central) (SNP)

*Chic Brodie (South Scotland) (SNP)

*Rhoda Grant (Highlands and Islands) (Lab)

*Alison Johnstone (Lothian) (Green)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Margaret McDougall (West Scotland) (Lab)

*David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stephen Boyd (Scottish Trades Union Congress)

Malcolm Fraser (Malcolm Fraser Architects)

Nancy Jamieson (Heads of Planning Scotland)

Fraser Kelly (Social Enterprise Scotland)

Alistair MacDonald (Royal Town Planning Institute Scotland)

Trisha McAuley (Consumer Futures)

Alison Polson (Planning Aid for Scotland)

Colin Smith (Royal Institution of Chartered Surveyors)

Dave Watson (Unison Scotland)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

Committee Room 4

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 12 June 2013

[The Deputy Convener *opened the meeting at 09:30*]

Decision on Taking Business in Private

The Deputy Convener (Dennis Robertson): Good morning and welcome to the 19th meeting in 2013 of the Economy, Energy and Tourism Committee. I remind everyone to switch off mobile devices, because they interfere with the broadcasting system.

Item 1 on the agenda is to ask members whether they are content to take item 3 in private, and to consider in private at subsequent meetings a draft report on the draft Debt Arrangement Scheme (Scotland) Amendment Regulations 2013. Is that agreed?

Members *indicated agreement.*

The Deputy Convener: Murdo Fraser, our convener, offers an apology because he is running slightly late. He will take over the convening of the meeting on his arrival.

Regulatory Reform (Scotland) Bill: Stage 1

09:31

The Deputy Convener: Item 2 is evidence from our witnesses on the Regulatory Reform (Scotland) Bill. I invite the witnesses to introduce themselves and to make brief opening statements, if they wish to do so.

I remind members that they should keep questions fairly short and concise. Likewise, I ask our witnesses to keep their answers fairly short and concise, as that will mean that we can get through more questions.

I invite Mr Kelly to go first. We will then move on to Mr Boyd and the other witnesses.

Fraser Kelly (Social Enterprise Scotland): Thank you for the opportunity to give evidence to the committee. Social enterprise is a business model that is already heavily regulated, whether in relation to the discipline in which organisations participate or in the construct of the organisations. I suggest that there is already heavy regulation in the context of housing, financial services, social care, health, criminal justice, employability, tourism, retail and hospitality. On the construct of organisations, a whole range of regulation already affects the way that community interest companies, Scottish charitable incorporated organisations or companies limited by guarantee that have charitable status do business.

I am happy to discuss with the committee a number of issues that our members have identified with the regulatory reform requirements.

Stephen Boyd (Scottish Trades Union Congress): I am an assistant secretary with the Scottish Trades Union Congress. Given the focus of the discussion, it is probably also relevant to say that I am a long-standing member of the Scottish Government's regulatory review group.

I have no great need to make an opening statement, as our views are all in our written submission. It is probably worth highlighting that the bill overall is not a huge issue for the STUC at this point; the provision in the bill that is preoccupying us is the economic duty. I do not claim to be massively well informed about other aspects of the bill.

Trisha McAuley (Consumer Futures): I am the director for Scotland for Consumer Futures, which is the new name for Consumer Focus Scotland. In light of the United Kingdom Government's reforms of the consumer landscape, we now work only on energy, post and water, but we have a remit to apply our insight to regulatory markets in general.

We have had to curtail or stop our work in some of the other areas covered by the bill, such as planning, food safety and environmental issues, so we did not put in an extensive written submission. Nevertheless, we are happy to talk about the bill's general principles and, like Stephen Boyd, our main concern and specific interest is with the economic duty.

Dave Watson (Unison Scotland): I am the head of bargaining and campaigns at Unison Scotland. We represent the staff who administer most regulation. We made the case in our submission for the value of regulation to be recognised. Like others, we are concerned about the confusion that the economic growth proposal creates. We are also concerned about the centralisation proposed in the bill, particularly through national directions and planning fees.

The Deputy Convener: If witnesses and members wish to make a point, they should catch Diane Barr's attention. She will pass the information on to me and we will move on from there.

I will start the questioning. Is legislation the way forward to improve the consistency of regulation in Scotland?

Dave Watson: In simple terms, the answer is no—needless to say, I will expand on that. Regulation is different in different fields and in different parts of the country. Most of our members are involved in local regulation and have to reflect the needs of not just businesses but the community. If you read the planning sections of the bill, you would think that the only customers of a planning department are developers, when, in fact, the customers are us—the community. Planners have to take into account a wide variety of interests. That is difficult when community interests come up against commercial interests; nonetheless, it is the job of planners to look after us, not simply to look after businesses' interests.

Trisha McAuley: We agree with the proposal to place a duty on local authorities, but we feel strongly that there needs to be provision for an evidence-based case for exceptions. We think that national standards will bring consistency, fairness and transparency, which we think will benefit consumers and business and should result in clear national priorities and better co-ordination and dialogue between agencies. We think that that will offer benefits to consumers and maximise efficiency and effectiveness.

We think that there is a clear case for evidence-based exceptions. I echo precisely the points that Dave Watson made. We need to think about local variations, because we have diverse communities in Scotland. From that point of view, we do not think that ministers should have a duty to

determine exceptions, because it would be a burdensome, time-consuming process and would mean that the people who set the standards were also the people who created the exceptions, which we think should be done objectively and with a bit more flexibility.

The Deputy Convener: You do not believe that centralisation of the standards would be objective.

Trisha McAuley: We are not saying that centralisation would not be objective. The standards themselves are set in the context of their being centralised. That is fine. However, we are not entirely convinced that having the same framework that set the standards then being responsible for agreeing the derogations requires legislation.

Stephen Boyd: I certainly endorse Dave Watson's comments. In the past, trade unions have often been lone voices in making the positive case for regulation, which I do not think we hear often enough, but we have always acknowledged that to keep pace with a dynamic economy, regulation has to be proportionate and dynamic, and it has to be applied flexibly. I do not believe that the provisions in the bill are in keeping with that approach to better regulation.

One of the great paradoxes for the STUC is that the Scottish Government already has a decent approach to better regulation, which is applied through the regulatory review group. I am not quite sure what the bill adds to that better regulation agenda. Despite my having had the opportunity to discuss the issue at length with the chair of the RRG, ministers and senior officials, nobody has been able to make the case to me in any coherent fashion why we need the bill to supplement RRG activity.

Fraser Kelly: I echo Stephen Boyd's comments. Our members' view is that it is probably ill considered to leap to legislate further before the existing legislative and regulatory framework is reviewed. As David Watson said, the argument is around whether individual communities and structures are involved in the design stages, the review stages or in trying to achieve simplification, clarity and flexibility around existing regulation. Rather than leap to legislate, we have a desire to review what we have already.

The Deputy Convener: Thank you. I think that you have all set out your position quite clearly. I will ask members to tease out certain areas. We will start with Rhoda Grant.

Rhoda Grant (Highlands and Islands) (Lab): The argument about the difference between better regulation and less regulation comes across in some of the submissions. There seems to be a concern that the bill will lead to less regulation, which might impact on people carrying out those

duties but might also impact on the public. I suppose that the Government would argue that the bill is about better regulation, not less regulation. Are there things in the bill that lead you to be concerned that it will lead to less regulation?

Dave Watson: It is important to make the case for proper regulation. We should remember that the purpose of regulation is to protect the public and legitimate businesses. Good businesses have nothing to fear from regulation. In fact, they suffer from the cowboys. In our submission, we use the example of fly tipping, which does not help legitimate businesses. Regulation is valuable for business, and it is certainly valuable for the rest of us.

Our problem with the bill is to do with centralisation and direction setting from Edinburgh. We have no problem with regulators getting together in the regulatory review group, the Convention of Scottish Local Authorities issuing guidance in consultation with regulators, or best practice standards. Those are all good things, but they are not the same as top-down performance indicators. Have we learned nothing from the Blair Administration years at the UK level, during which a delivery unit was created with hundreds and then thousands of targets?

With such approaches, two things happen. First, other services suffer while everyone chases a target. Hospital waiting lists are a good example of that. Secondly, people game targets. I will take planning as an example. Today, we launched some survey results that show how busy and stressed planning departments are at present. If we set a target of, say, six weeks for a planning application, there will be a temptation for planning officers to reject a bid because it does not meet the regulations, rather than going down to the householder, saying, "Look, if you tweak it a bit here, it will get through", and waiting a few more weeks. That would be a good use of regulation as it would involve engaging with the applicant, whereas targets simply drive a rejection philosophy, which pleases nobody.

Trisha McAuley: We welcome the Scottish Government's overall approach to regulation. It is trying to achieve better regulation. It gets it that regulation is a means to an end and not an end in itself, and it has a clear policy objective and a vision of what it is trying to achieve. However, we are disappointed by the limitation of its vision of regulation as a means of supporting business and economic growth. The suggestion that the objective of better regulation is only to deliver that and to provide a favourable business environment in which companies can grow and flourish, which is clear in the policy memorandum, ignores the fact that better regulation is as much about

consumers as it is about businesses, and that it benefits both.

Stephen Boyd: To add to what Dave Watson said, I think that it is important to draw a distinction between what the UK Government is doing—it is pursuing a nakedly deregulatory process through its risible red tape challenge and associated activities—and the Scottish Government's agenda, which I am certainly not trying to suggest is about anything other than better regulation. The problem is that, as well as the economic duty, the bill covers issues around primary authorities and transferable certificates, and it opens up opportunities for regulatory arbitrage between different parts of Scotland. I do not believe that that is the intention, but when we look at regulation we always have to be careful about unintended consequences, as we have seen from numerous examples over the years. Those aspects of the bill certainly open up opportunities for that even if it is not the stated intention—and I do not believe that it is.

Fraser Kelly: I do not think that there is an argument that people are championing less regulation; it is about better regulation and the issues that I mentioned earlier—consistency of approach, simplification and clarity. An organisation that operates in the housing sector will be regulated by the housing regulator, and if it establishes economic activity through a subsidiary that operates in social care, it will have regulatory requirements in relation to social care as well. If it is established as a charitable organisation, it will also have to operate within the Office of the Scottish Charity Regulator guidelines. It is the merging of those requirements and the need for a consistent approach among each of those regulatory frameworks that are vexing our members.

There is a real challenge in creating economic advantage through business models that make a difference both in terms of the economic outcome and under the preventative spend agenda, and regulatory frameworks potentially get in the way of that.

09:45

Rhoda Grant: Are there things that can be done through the memorandum of understanding between the Government and COSLA? Indeed, certain regulation opt-outs will be available. Would that alleviate fears, or do we need to go further to make the bill work?

Dave Watson: Working with COSLA to bring national standards together is the way ahead. I would distinguish that from the bill, which seeks to give ministers the power to direct from Edinburgh—that is the difference. There is a clear

approach. We have a regulatory reform group, on-going work with COSLA, guidance that has been issued and all the professional bodies that have been set up in the different areas. All of that can be pulled together with best practice and so on. That is the way to drive improvement; it is not for a minister in Edinburgh to sit there and say, "You will do X and Y." The consequences of that would be as I described before.

The Deputy Convener: The economic duty was mentioned in some of the opening remarks. Alison Johnstone will ask about that.

Alison Johnstone (Lothian) (Green): We have heard evidence about the economic duty from previous witnesses. Scottish Natural Heritage felt that the promotion of an economic duty would have no impact at all on what it is already doing. There is a feeling among many that non-legislative approaches are working and that legislation simply is not necessary. However, concern has also been expressed that there is a conflict between the economic duty and other duties that regulators have.

In their written submissions, the STUC and Unison make it abundantly clear that they do not favour the economic duty. Unison's submission states:

"Many are concerned that it will leave their decisions open to a range of challenges when they give priority to ensuring public safety or that of the environment"

over the economic duty. What challenges to decisions do you fear?

Dave Watson: Let us be clear. Most regulators take economic factors into account. Sadly, as a result of the cuts in staffing, they are increasingly having to act in a policing role rather than in their main role of educating and supporting. That has come out clearly in recent surveys. Our members would prefer to spend time with businesses and others, helping them through regulation rather than policing them. However, that is largely where we are, as we have shown with environmental health and planning in particular.

Our members are concerned about putting the economic duty in statute because it is ill defined. As many others have asked, what exactly does the duty mean to a regulator? A regulator knows that, if a chemical company pours chemicals into a river, that can be measured and appropriate action can be taken. There might well be an economic impact on the chemical company if it is prosecuted on that basis, but what balance is the regulator supposed to strike? The concern is that it will get dragged into a series of legal challenges. The company might say that the regulator took account only of the chemical spillage in the river, not the economic impact, and the case could end up traipsing through the Court of Session, which

would tie up our members in days and months of legal work at a cost to the local authorities involved.

Given that prospect, would the regulator say, "This is a big chemical company that is going to tie us up for months in work on the case. Maybe we should just turn a blind eye to the spillage and go after smaller companies"? I am not saying that it would do that, but that is the risk because companies have deep pockets and can use the legislation. The economic duty is ill defined and could have consequences that I do not think were intended by those who drafted the bill.

Trisha McAuley: I support what Dave Watson has just said. We think that there is a lack of clarity about how the duty might work, and we are concerned that introducing the new statutory duty might override regulators' core functions. It is not well defined.

We think that sustainable growth is not just about economic growth; it is about social and environmental welfare. I am not suggesting that we introduce yet another statutory duty on regulators, but we are concerned that there is a growing trend.

A few months ago, I attended a meeting of the Infrastructure and Capital Investment Committee at which several organisations made representations about similar duties being imposed on Scottish Water in respect of the hydro nation agenda. The Scottish Government consequently lodged an amendment. We want to strike a balance, as sustainable growth is not just about economic growth but is also about social and environmental welfare.

The situation is ill-defined at the moment, from the point of view of end users and people who are regulated. We would be concerned that one duty would override another.

Stephen Boyd: I tend to agree with the view that was espoused by the SNH representative to whom the committee spoke recently. As we say in our written submission, there is no evidence that Scotland's regulators are acting in a way that is preventing sustainable economic growth. No one has provided evidence in that regard. Our concern is that the introduction of the duty tips the balance further the other way. We need to learn the lessons of recent economic history of one regulatory failure after another. In our written submission, we talk about what happened when the Financial Services Authority, at a UK level, was given a specific duty almost to promote the financial services sector. That made it difficult for it to discharge its core remit, as there was a fundamental conflict between promoting the sector and regulating it.

Beyond that is a wider issue about the further embedding of the view—which is, unfortunately, broadly shared—that regulation is a fundamental barrier to economic growth in Scotland. Scotland is an extremely lightly regulated economy. The labour market is the third most deregulated in the developed world and the product market is the second most deregulated in the developed world. That is why we were at the epicentre of the banking crisis and why we have more low-wage jobs than any similar jurisdiction. We need to be clear about the downsides.

Marco Biagi (Edinburgh Central) (SNP): The initial proposal that was consulted on was changed to make the duty for sustainable economic growth apply only to the extent that it is compatible with the exercise of a body's functions. Do you think that that represents a material change in how the duty will impact on regulators?

Dave Watson: In fairness, I think that we would all agree that the present wording is better. The responses to the original consultation were very strong on that point. However, the new wording still has the risks that I have indicated. The issue is not so much that there will be legal challenges; it is that there might be, and that will have an impact on regulators. Although the wording is a bit softer and gives regulators a little less concern in those areas, the unintended consequence will still be that regulators will be concerned about how companies—particularly big companies with deep legal pockets—will make use of this provision to the detriment of the public.

Alison Johnstone: Is it clear to the panel that there is an agreed definition of sustainable economic growth? Does it mean the same to everyone? Would it make sense to have clarity on that term and ensure that it is fully understood before we impose a duty on regulators to promote it?

Stephen Boyd: I saw that there were some questions about definitions of sustainable economic growth, so I dug one out, which I will read to you:

“Sustainable development refers to a mode of human development in which resource use aims to meet human needs while ensuring the sustainability of natural systems and the environment, so that these needs can be met not only in the present, but also for generations to come.”

That accords very closely to what most of us would understand by the term “sustainable economic development”, but it also reflects the fact that there are likely to be some legal problems with regard to implementation, particularly, as Dave Watson said, when it comes to large companies that have significant legal resources. Would it be possible to come up with a less woolly definition of “sustainable economic growth” than the one that I just read out?

The Deputy Convener: Where did that definition come from, Mr Boyd?

Stephen Boyd: Wikipedia, I am afraid. *[Laughter.]*

Trisha McAuley: Did you write it?

The Deputy Convener: I just thought that we should be clear where the definition came from.

Stephen Boyd: From memory, I think that it is very close to the definition that has been in various Scottish Government documents.

Dave Watson: I think so, too.

Alison Johnstone: The definition that Mr Boyd gave appeared to be a definition of sustainable economic development. It might be that “sustainable economic growth” should be replaced by “sustainable economic development”. I am sure that the committee will explore the issue at some length.

Mr Kelly, what is your view?

Fraser Kelly: You have made a valuable point. Trisha McAuley commented on the issue, too. It is about who understands the phrase. What do the people who use services—our customers—understand by “sustainable economic growth”? When we design the delivery of services within a regulatory framework, it is important that people can understand why services are designed and delivered in the way that they are.

That brings me back to issues that our members have with existing legislation. We are encouraged by the proposals for bills on procurement reform and community empowerment and renewal, which will put duties of care on organisations to procure and commission services in a different way. I challenge the approach a little, in that I think that there is already sufficient power for organisations to do things differently. We do not need more legislation. However, as those bills are introduced, people will understand better what is trying to be achieved.

We must think about the audience to whom we want to get the message out about what sustainable economic growth means. I do not think that anyone would argue with Stephen Boyd's definition, but if we read it out to someone in the street I think that they would switch off and fall asleep before we got to the end.

Marco Biagi: For clarity, does “sustainable economic growth” need to be defined in statute for the approach to work?

Dave Watson: The difficulty with that is that if we are struggling—even with the benefit of Wikipedia—we should put ourselves in the shoes of an environmental health officer, a planner or a Scottish Environment Protection Agency inspector

on the ground. How will a new professional in such an area make such judgments on the ground? It is difficult.

I am a lawyer, and I can tell you that if I was a commercial lawyer, that kind of phrase would be wonderful and would keep me tied up in the Court of Session earning fees for a long, long time. Frankly, we have better things to spend public money on.

Marco Biagi: That is slightly aside from my point, which I suppose is about whether the power, if it is introduced, needs to carry a definition with it. Is that immaterial, because the legal challenges will happen anyway?

Dave Watson: I think that they will happen anyway. If you put a phrase in legislation, it is helpful to include a definition, because legislation has its own lexicon in the laws of statutory interpretation. However, the difficulty is that any definition that you come up with will be very general and fairly woolly and will be open to challenges as to, first, what it means, and, secondly, how it is applied in particular circumstances. Those are the two legal challenges on something as nebulous as sustainable economic growth.

The Deputy Convener: Did Trisha McAuley want to come in?

Trisha McAuley: Yes, but the conversation has moved on, so I will just say that I support what Dave Watson just said. Any definition that would clarify things would help, but we question whether the duty is required at all. That is our key point. If the duty remains in the bill, it should be better defined than it is at present.

Chic Brodie (South Scotland) (SNP): Mr Watson, why do trade unions have rule books?

Dave Watson: We have rule books because they regulate the rights and responsibilities of members, as does regulation in other areas that our members regulate.

Chic Brodie: You agree that there is a need for regulation.

Dave Watson: Absolutely. We make the case for regulation.

Chic Brodie: To promote the union and ensure that it works effectively.

Dave Watson: No, no. The rule book is there to regulate the rights and responsibilities of members and the organisation. It regulates behaviour, as it were, on that basis, as does regulation in the community.

Chic Brodie: I have difficulty with where you are coming from. You have talked about policing as opposed to regulation. Your submission talks

about deregulation favouring cowboys. We sit here six years after a debacle in the banking industry because of light-touch regulation and deregulation. What is your position? Are you in favour of regulatory reform or not?

10:00

Dave Watson: We are in favour of good regulation. That is pretty clear in our submission. The banking industry is a good example of the risks of light-touch regulation. Good regulation is to the benefit of good businesses and the community. That is what we say in our submission, so we are all in favour of regulation. We are not in favour of oppressive or unnecessary regulation. Scotland has a lightly regulated economy, as Stephen Boyd rightly pointed out, but the regulation that we have exists for a good reason. Our members who administer it understand that and that they are there to do that on behalf of the wider community.

Chic Brodie: Are things working well? Why do you think that the proposed regulatory reform undermines local democracy?

Dave Watson: It undermines local democracy because ministers in Edinburgh would set out their version of national standards, not the local authority that is elected to do that in its communities. Secondly, particularly under the planning proposals, ministers will set out their view of performance in each and every local authority. Again, that is the role of the democratically elected local councillors.

It is a question not only of democracy but of practicality. We have been through the stage of top-down performance targets, and virtually everybody, from the systems thinkers onwards, has argued that it has not worked. Even people who worked in the Prime Minister's delivery unit now write books saying that it did not work, so it seems strange that we are suddenly leaping to a model that failed abysmally during the previous UK Administration.

Chic Brodie: I do not wish to draw any parallels with how London operates. I am confident that we could do a lot better.

Mike MacKenzie (Highlands and Islands) (SNP): Mr Watson, I am not sure whether you are absolutely up to speed with the planning regime. Are you aware of the Heads of Planning Scotland planning performance framework?

Dave Watson: Yes, and it is a good example of getting together best-practice standards from people who deliver the service at the sharp end. That is not the same as a minister and senior civil servants in Edinburgh setting the standards. There is nothing wrong with having national guidance

and practice or with people getting together and working out the best way of dealing with things. There are structures and frameworks to do that. However, that is not the same as top-down performance targets that are decided by a minister and civil servants in Edinburgh. They are two different things. The HOPS approach is the right one; the top-down one is the wrong approach.

Mike MacKenzie: You must, then, be unaware that the HOPS approach is very much the one that the Government is encouraging.

Dave Watson: I am sorry, but that is not the approach that is in the bill. I agree that, to date, that is exactly what Governments of all colours have done since 1999—they have worked to improve performance—but the bill has a specific proposal in it, and people right across the board, including planners, have pointed out the consequences of taking that top-down approach, which is set in the centre.

Mike MacKenzie: What, then, do you think of the first annual planning performance report? I urge you to consider the fact that it is the first one, so it has been encouraged by the current Government, not by all Governments since 1999.

Dave Watson: I have no problems with that report. The general approach of improving standards, improving delivery and co-ordinating is fine, but that is not what is in the bill. I do not know whether it was intended to be in the bill, which gives ministers clear powers to set their own performance framework from Edinburgh. That is not the same as the approach that has been taken to date, which has been to improve performance across the board.

Chic Brodie: In talking about a particular issue, your submission states:

“Cutting back on vital regulation and inspection can and will cost lives. This Bill is chasing the wrong target.”

Later on I can try to define what I mean by sustainable economic growth, but part of the problem is that there has been a lottery in terms of performance management. I will come to Trisha McAuley in a moment about the implication of planning fees. How do you propose that we create a dynamic economy that can do all the things we are talking about in terms of the environment, sustainability and so on without having to support the national economic strategy that has cascaded down? How do you propose that we measure performance?

Dave Watson: When we say that the bill is chasing the wrong target, we mean that the surveys that we have done, particularly in the past couple of months—on environmental health and on planning—demonstrate significant cuts in staff. Both the numbers and types of inspections have

had to be cut and we have seen consequences of that in environmental health and in food inspection, with E coli and legionnaire's disease, for example. We are also seeing a big cut in the education and support role that regulators have in relation to businesses and the community. That is the target that we think should be chased; it is about that sort of service. We do not believe that the way ahead lies with ministers deciding the performance of each and every local authority in Scotland.

Chic Brodie: The bill does not say that.

Dave Watson: I am sorry, but the bill does say that; that is exactly the power that it gives to ministers. In our view, that performance approach from the centre is wrong. We can see from guidance on approaches and best practice that we can develop a narrative around economic growth and how regulation fits into that. I have no problem with the broad Scottish Government strategy on that basis. The problem is that if we put that in a piece of legislation that can be legally challenged—in fact, every single regulatory decision could be legally challenged on that basis—that is an entirely different ball game from the sort of approach that has been supported by the Scottish Government to date.

Chic Brodie: I will go back to performance, if I may.

Trisha McAuley, in your submission you expressed concerns about the proposals. You said that you do not support the view that there is a direct link between planning fees and performance. What is the basis for that comment?

Trisha McAuley: It is difficult for me to answer that question at the moment, because we no longer work in that area and I have no remit. Therefore I have not looked at the bill with that in mind, nor made any preparation to talk on that subject. I can certainly go back to it.

Chic Brodie: The STUC, too, commented about the constraints on planning departments. Stephen Boyd, do you have any comments on performance and how we monitor that?

Stephen Boyd: I have very little to add to what Dave Watson has said, apart from saying that, as I go about my business, speak to developers and observe long-established businesses around the country, I see that the planning issues that constrain development concern skills, resources and the capacity of planning departments, as Dave Watson has said.

Professor Russel Griggs spoke before the committee a couple of weeks ago. He regards the work done on the surface coal-mining sector as one of his great achievements with the RRG. I have engaged very closely with that sector over

the past decade. I will give you an example of the problems that the sector has come up against when it comes to planning. I was visiting the managers of Scottish Coal a number of years ago. They said that they had taken on a great new planner who had worked for South Lanarkshire Council. It was excellent: the person had great skills and tacit knowledge and knew the industry inside out. They were coming to understand, however, that it was probably not a good thing for them and that it would be better to have the planner still at South Lanarkshire Council dealing with the applications. They knew that it would be problematic for South Lanarkshire to replace the individual and for the new planner to build up the tacit knowledge of the sector that the former employee had garnered over a number of years. The constraints that they were coming up against did not concern the application of the planning process in general but the capacity of the departments that they dealt with daily to engage with them knowledgeably.

Chic Brodie: I am not sure where that places planners. On your example of the coal mine, the current situation is that we have a problem with the restoration of redundant open cast coal sites.

Stephen Boyd: Absolutely.

Chic Brodie: If there were better and clearer regulation, we would not be in the position that we are in now.

Stephen Boyd: I am not entirely sure that that was a regulatory issue. The regulation was in place, and both local authorities and developers knew what they should have been doing, but they chose not to do it. They chose not to keep the bonds as resourced as they should, and that has come back to bite them. Could tighter regulation have ensured that the bond was kept up to date? Perhaps, but it would not surprise me to learn that they would have found a way around that as they have done in the past.

Chic Brodie: So the regulation was ignored in that case.

Stephen Boyd: I am not entirely sure. The regulation was in place, but both partners in the process chose not to keep the bond up to date. I am not that up to date with the detail of the case. Could the regulatory system have been changed in such a way as to make sure that the bond retained its full value? If so, that should have happened, and this is another example of slack regulation that blights our economy and communities.

Chic Brodie: It blights our growth.

Stephen Boyd: It does blight our growth, and that point is often overlooked. We tend to assume

that less regulation means more sustainable economic growth but, sadly, it does not.

Chic Brodie: On that basis, then, better enforced regulation would not have blighted our economic growth.

Stephen Boyd: Absolutely.

Chic Brodie: Can I have one last question, convener? It is for Fraser Kelly.

The Deputy Convener: Yes.

Chic Brodie: Good morning, Fraser. Your sector has grown hugely in the past two years. A couple of weeks ago, the committee heard from the representative of OSCR, the charity regulator, who was here explaining its role. When did you last meet him?

Fraser Kelly: Within the past two months.

Chic Brodie: Do you know how often he or his function engages with your members and new members to help them to understand the regulations surrounding charity operations?

Fraser Kelly: Infrequently. The guidance that comes from the charity regulator is sometimes poorly understood by social enterprises.

If I can pick up on one of your points, I do not recognise social enterprise as a sector. It is a model or way of doing business rather than a sector. In my opening remarks, I mentioned that a number of organisations are so constructed that they require a regulatory relationship with OSCR. The most recent guidance that we have received from OSCR was about whether and how organisations are permitted to participate in the constitutional debate and the rules surrounding that. I suspect that that guidance is a little bit blunt. It is not as sophisticated as I think is necessary for our members. Indeed, that is some of the feedback that we have received. Some of our members have also challenged the point that the guidance does not reflect their legal position, and some of them are likely to challenge that, particularly around areas in which the legislation is set by the UK Government.

For example, we have some issues with the construct and implementation of the Welfare Reform Act 2012. We have member organisations that wish to challenge that but are scared of doing so because they think that it impinges on what they are allowed to do under the OSCR guidance. We need that guidance to be better understood, which is why I come back to my earlier comments. They might seem to be very simplistic, but we need clarity of design of regulatory frameworks and the reviews of those frameworks. We need simplification, clarity and flexibility. I apologise if that seems to be a bit of mantra.

Chic Brodie: No no. We can agree to disagree about whether social enterprise is a sector, but the important thing to note is that social enterprises and the third sector are adding value to the economic growth of this nation, and that might increase. You are saying that there are difficulties because the “regulator”—I put that in inverted commas—is meeting you infrequently and not giving enough guidance.

Fraser Kelly: I go back to Rhoda Grant’s question about less versus better. For us, the issue is about better legislation and regulation. Those regulatory bodies need to speak to one another more frequently and to speak to the organisations to which they have a responsibility more regularly. Everyone has rehearsed the issues of time and resources, and every organisation and every person in this room and beyond has those problems. That is why the simplification process and getting better regulation and legislation are far more important than getting less, or indeed more, regulation.

Margaret McDougall (West Scotland) (Lab): Section 41 deals with planning charges and fees in connection with performance. What are the witnesses’ views on the proposal to link planning charges and fees to performance? How would it affect planning authorities?

10:15

Dave Watson: I covered that to some extent in an earlier answer. We really do not see how that proposal will help matters. Evidence from a number of organisations has asked how removing cash because of poor performance will improve performance in a particular area. It is important to understand that planning fees are only part of the subject. The role of planners is not simply to respond to developers but to take an interest in the whole community. Sometimes, the actions that are required to get a planning application through require engagement with a wide variety of other agencies, not always the local planning authority that will deal with the application.

My real concern about the proposal is the idea that targets can be set from Edinburgh and, somehow, planners will change their behaviour. They may well do that but in a way that you might not wish.

Let us say that we have the six-week target that I mentioned earlier. Staffing cuts in planning departments will force planners to behave in a certain way when the high heid yins above them say, “We mustn’t breach the target because we will lose money and I’m going to get grief from the council.” In that type of situation, planners tend to stick strictly to the regulatory rules, so they are more likely to reject an application than go out and

help the applicant to amend it to get it through—that is what planning departments do at the moment if they have the staff and the time to do it. If they have a six-week or eight-week target, they will play to it. We have seen that with hospital waiting times.

In its work on systems thinking, the Vanguard Group analysed the top-down target performance culture across the public sector in the UK in huge detail. The group has shown time and again that that type of culture does not work and has pointed out strongly that it is the wrong approach. In fact, a previous minister, Jim Mather, was probably the biggest advocate of that argument. We also say that it is the wrong approach. It will not achieve what people think it might achieve and, in fact, it could have unwarranted consequences.

The Deputy Convener: Do you acknowledge, however, that there is a need to measure performance?

Dave Watson: We can say that it would be a broad gain if applications were dealt with promptly—within six or eight weeks. That is absolutely fine, but if we have strict targets, people game the targets and other services lose out as a consequence. The issue is the framework and how we measure performance. We know from experience that having penalties in the way that is proposed in the bill does not work.

Margaret McDougall: Could I hear from other witnesses on that?

Stephen Boyd: I have nothing to add to what Dave Watson said. I reiterate the point that we know from the experience of the past 15 years that targets change behaviours but do not improve systems. The evidence is unchallengeable.

Trisha McAuley: As I said when Chic Brodie asked a question about that, we have no further remit in that area, so I cannot talk about planning. What we said in our response to the consultation still stands, so the best thing to do is to refer back to that for information.

Margaret McDougall: What alternative changes could be implemented to improve planning performance?

Dave Watson: Many of the things that the Scottish Government has done over the past few years to encourage better liaison, more sharing of best practice and peer review, which was suggested in one of the submissions, can all improve practice. However, the biggest requirement is to resource planning departments properly.

We will send the committee the survey that we are publishing today. We asked planners at the sharp end what their experience was. Overwhelmingly, they say that they have to drop

things, have to rush things and are unable to deliver the standard of service that they wish to provide. That is the real issue in planning departments at the moment. We can do a range of things from the centre, but the reality is that, if there are not enough people on the ground to do the work, the quality of service will fall for those who make planning applications and for the wider community that relies on planners to ensure that the built environment is protected.

Margaret McDougall: Is the decision about how they fund the service not one for local authorities?

Dave Watson: I am sure that if a COSLA representative were among the witnesses, they would give you a quick lecture about local authority cuts and the scale of the problem. We might have some sympathy with that view.

All that I can tell you is what the people who deliver the services at the sharp end say. They make it clear that they are currently very stressed, that they are hard-pressed to deliver the basic service and that they are having to drop things that are to the benefit of the service.

Margaret McDougall: Is there an adequate mechanism to allow for engagement with consumers on planning decisions?

Trisha McAuley: I refer back to our consultation response. We said, as Consumer Focus Scotland, that there was not adequate engagement. I cannot expand any further on that.

Margaret McDougall: Should planners and local authorities have the right to appeal ministers' decisions?

Dave Watson: We do not have a policy view on that issue, as we have not considered it.

Margaret McDougall: Does no one else have a view? If not, I thank witnesses for their previous responses.

Mike MacKenzie: On a slightly different theme, I am sure that we all support the principle of local democracy and support decisions being taken locally. Can the witnesses help me by providing examples of when a local community has campaigned against national regulations and the local authority has said, "Yes, you have made a very good case. We will exercise our power to vary the way in which the regulations are applied"?

I am thinking about some of our more far-flung communities, such as Shetland, Orkney and the Western Isles, where some regulations are least appropriate, because those communities are radically different from Edinburgh. Can you give examples of where local democracy and local regulation have been used wisely and well to take account of very different local circumstances?

Dave Watson: Off the top of my head, I cannot picture a particular example but, when we talk to our planning officers group, the officers talk about how they apply regulation. Not every regulation is black and white, so there is scope for discretion in a number of areas. A planning officer who works in Shetland will understand the local circumstances. They obviously cannot break a particular regulation but, when they have flexibility to meet local circumstances, they will use it. That is what planners do.

Mike MacKenzie: I take that answer to mean no, given that you cannot think of any examples. Can any other witnesses think of concrete examples of what I have described?

Given the silence, I thank you very much. I am sure that you will agree that that is very significant and pertinent to our discussion.

Dave Watson: I am sorry, convener, but I do not think that that is at all pertinent to our discussion. I answered the point in general terms. I am not sure what point Mike MacKenzie is trying to make. The fact that we cannot produce a specific example from a specific local authority is not material. I am sure that every planner in every local authority in Scotland could give you an example—

Mike MacKenzie: I would like to thank you and move on to other questions, if you do not mind.

Stephen Boyd: I endorse Mr Watson's point.

Mike MacKenzie: Can you think of a situation in which members of the public might be distressed by being faced with a postcode lottery, because onerous regulations apply in one area but a few miles across the border, as it were, the regulatory regime is different? Would people be distressed or unhappy about that situation?

Dave Watson: I can see that people might feel that, but the point is that there are national laws for a lot of these issues, although there might be discretion in areas. The problem with the concept of a postcode lottery, which is used in a number of areas, is that one person's postcode lottery is another's local discretion. To be honest, I always cringe when politicians of all colours—it is not just Mike MacKenzie—use the phrase "postcode lottery", and I have given others a hard time for it as well, for that very reason. I understand the issue about regulation being applied differently but, in the main, most regulation is dealt with locally and people exercise sensible discretion when they can do that under national laws, which are consistent throughout Scotland.

Fraser Kelly: Mike MacKenzie raises an interesting point. Our understanding of the Scottish economy is that the issues that affect communities are broadly similar. They are

housing, health, economic sustainability—do people have jobs?—and environmental sustainability. The issues are similar, but communities need different solutions in many cases. The issues in Helmsdale or Elgin are not the same as the issues in Greenock or Port Glasgow.

We have a number of organisations that deliver services nationally across Scotland and the UK, be it in housing, health or employability. I suspect that they are concerned about inconsistency in the application of some regulation. They want to achieve a greater understanding of whether proposals and developments will be achieved in the same timescale and at the same quality in one local authority area as in another.

I apologise for not answering any of the questions on planning. I am not a planner, so I did not want to come in on any of the town planning issues. However, careful consideration of local solutions is needed in a number of areas. That is why, as I mentioned, I am encouraged by the proposed community empowerment and renewal bill, because it will place back in communities control over the design of services and how they are delivered to meet communities' needs.

I am interested in the comments that Dennis Robertson made about what we can measure. I am a great believer that, if we cannot measure it, we cannot manage it. Our members are involved in disciplines from housing through to health services, and many of them are telling us that the measurement frameworks that are applied are inconsistent and that they have almost to have a number of attributions to achieve a sensible assessment of economic or social outcomes.

The Deputy Convener: You will be seeking outcomes with reference to your measurements.

Fraser Kelly: Yes.

Mike MacKenzie: Mr Kelly, I thank you for making an important contribution to the debate. In your earlier comments, you seemed to point out that the regulations that impinge on a business or organisation often differ from or contradict each other. Can you or the other panel members think of any examples of that?

The Deputy Convener: Mr Boyd wants to come in first.

Stephen Boyd: I would like to make a general point about complaints. We often hear about inconsistent application of regulation. I have been a member of the RRG and its forebears since the inception in—

Mike MacKenzie: Can I stop you? It would be much more helpful if, rather than making the point that you were going to make, you answered the

question that I asked. That is usually how this operates.

Stephen Boyd: You are making points of an extremely general nature, so I am responding in kind. I think that it would be polite, having invited—

Mike MacKenzie: I am asking for specific examples that you are aware of.

Stephen Boyd: I am going to come to that.

Time and again at the RRG, we hear complaints about inconsistent application of regulation. Time and again we ask for the detail of the complaints, and time and again it is not forthcoming. As I think Russel Griggs said to the committee a couple of weeks ago, in the whole time for which the RRG has been going, we have received fewer than 10 specific complaints about inconsistent application of regulation. I cannot give specific examples because we do not get them following general complaints. We hear general complaints time and again but, when we ask for the detail, it is just not forthcoming.

The point that I am making is that to try to pretend that business growth in Scotland is significantly constrained by the inconsistent application of regulation is ridiculous. There is no evidential basis whatsoever to justify that proposition.

10:30

Mike MacKenzie: Mr Watson, given your concerns about planning, I expect that you can give me numerous examples.

Dave Watson: If you are looking for examples, we have set them out in our evidence and have provided other information on that basis. I have not come armed with 20 examples in 20 authorities. Our evidence is based on the views of those on the ground who do the work every day—they are not sitting in Edinburgh watching this meeting—and they say that deciding the regulation in Edinburgh then imposing it on everyone in the country is not the right approach. All that they would say is that they seek to apply regulation flexibly to meet local circumstances.

Mike MacKenzie: But you cannot give any examples.

I note that Trisha McAuley has not had much to say, so I will steer my final questions into an area that she might be able to comment on. The bill will allow regulators—particularly SEPA—to focus more on big business and big organisations. The struggle that SEPA has sometimes faced in devoting sufficient resources to their regulation might have disproportionately affected small businesses. From her days in Waterwatch, does Ms McAuley remember the fiasco—

Trisha McAuley: I was not in Waterwatch.

Mike MacKenzie: I am sorry—I must have misunderstood.

Trisha McAuley: I am happy to answer your question, though.

Mike MacKenzie: In general terms—I think that Mr Watson has touched on this—do you think that big business and big organisations have been tying regulators in legal knots and that, as a result, regulations have disproportionately affected small businesses and small organisations, which do not have the legal resources to fight them? Does the bill's thrust give the regulators more teeth to deal with bigger businesses and organisations and, if so, is that a worthwhile direction of travel?

Trisha McAuley: I am not sure that the bill gives regulators more teeth, but I am certainly concerned that the overriding duty—if it is overriding—would make regulators focus on big business at the expense not so much of regulating small businesses as of going out to help them. The committee will need to speak to the small business sector, but we represent such businesses in the regulated markets that we work in and we know that they are under severe pressure.

In any case, you make a very interesting point that we would support. If the bill is to contain an economic growth duty, it must be applied proportionately to support smaller businesses and should not be simply a tick-box exercise for the regulator.

With the convener's permission, I will return to the previous debate on national standards without, I hope, getting drawn into the need to give examples, because I have to tell you that I cannot remember too many. As a consumer organisation focusing on grass-roots support, we have struggled long and hard with the dichotomy between local democracy and national standards. Although consumers reside in a particular local authority area, they still move around and buy their food from restaurants elsewhere and so on. In doing so, they are at risk from varying environmental health or SEPA operations. Based on research that we have carried out, we feel that consumers benefit from a consistent approach.

We came down on that side because of Consumer Focus Scotland's work on local authority enforcement services in key areas such as trading standards, environmental health and food safety—and, in saying that, I realise that I am stretching outwith our current remit. It is the fault not of local authorities but of the times in which we live that, over the years, what is very much a patchwork of services for consumers has developed in those areas. Some local authorities have been able to devote resources to such

issues, while others have no resources whatever, and the ageing workforce is not being replaced. As a result, consumers are very much at risk.

We thought about looking at the issue from a national perspective so that we could nudge local authorities into looking at those areas more, as they are the poor relation of some services. Some would say that that is quite right and that it is perfectly understandable that local authorities must concentrate on front-line services. However, some pretty critical issues are in the background. That is why we took the approach that we have taken.

Chic Brodie: I will comment on the important point that Trisha McAuley made about the patchwork consequence of some developments and on Stephen Boyd's point about interpretation. Mike MacKenzie asked for an example, so I will give one, which concerns a potential wind farm development in South Ayrshire. A community there interpreted what one regulation, PAN 47, said about the role that it could play before the application, but the local authority took a different view. Another planning regulation, PAN 3/2010, detailed what could be done post-application. The community council took one view; the local authority took another. There is a lack of clarity in the documents; that has taken up loads of planners' time, has created angst in the community, and it certainly has not been productive. The consequence might well be that that does not add value to economic growth.

Based on what has just been said, is that an example of the need to streamline and reform regulations? It is not a case of the minister dictating. The minister can use and revise codes of practice, but is that not an example of the sort of thing that goes on day after day?

Dave Watson suggested that the bill is a manifesto for solicitors and lawyers across Scotland, but that is exactly what we have today. Somehow, we have to consolidate and embrace the position so that we still enjoy local democracy but get some efficiency in the system, because it surely is not there today.

Dave Watson: I am not sure what the question is—

Chic Brodie: It was not a question; it was a statement.

Dave Watson: My point is that, yes, regulation will always be applied differently. There are mechanisms and frameworks and there are various ways of addressing different interpretations of arrangements. The conflict involves the development of national standards and the minister sitting in Edinburgh deciding what he or she thinks should be the approach on that basis. We need local authorities and others to

work and engage with the communities that are affected in order to reach understandings on common practice, rather than the top-down approach that is promoted in the bill.

Chic Brodie: I think that Dave Watson needs to look at sections 43 to 45, which relate to the minister's role in developing a code of practice when changes apply.

The Deputy Convener: I welcome the convener, Murdo Fraser, who will take over the chair.

The Convener (Murdo Fraser): My apologies for not being here earlier; I am grateful to Dennis Robertson for stalwartly holding the fort in my absence.

Trisha McAuley: We are still discussing the key tension involving local democracy and community capacity. That is critical, but there is inconsistency. I will not rehearse some of that, as it sits in what we mean by sustainable economic growth. If we are looking at putting a duty on regulators, taking the wider view is definitely the way to go.

The code of practice is interesting, as are some of the processes that underlie the bill. We are concerned about the overriding driver and a skew towards supporting business growth rather than supporting consumers and communities.

For example, the consultation paper that was published in October said that the Scottish Government would have a dialogue with regulators, the Convention of Scottish Local Authorities and the business community. As a consumer organisation, we responded to that consultation and asked for a meeting, but we were not involved in engagement on how the bill developed after that. That engagement was limited to people who were undecided on the duty and did not include people who had concerns about it. The consumer and community side of how we address the dichotomy has not really been involved in the process.

The code of practice could be one way of addressing that, because the policy memorandum states:

"The code will be developed collaboratively with business representatives, public bodies, regulators and COSLA."

However, it does not mention collaborating with people who represent consumer interests and citizen interests or with Fraser Kelly's sector. There is more work to be done, but a code of practice might be a way round that, so that communities are properly consulted within the framework in the bill. I pick up on what Chic Brodie said; maybe the process afterwards needs to be looked at to ensure that communities are properly consulted.

Chic Brodie: I agree.

The Convener: Trisha McAuley mentioned the code of practice, which I do not think has come up before. Does anybody else have concerns about the code of practice, or are the witnesses content that it is provided for in the bill?

Trisha McAuley: We are content that it is provided for in the bill, but ministers are not required to consult bodies that represent end users of the code of practice. Section 1 requires end users and the recipients of regulation, including businesses, to be consulted on regulations, but there is no requirement to consult those people on the code of practice. Such a requirement could be included.

Stephen Boyd: I should probably point out that unions will be involved in the development and implementation of the code of practice; there have been discussions to that effect.

Dennis Robertson: Should the memorandum of understanding be underpinned by legislation? Should it be in the bill?

Stephen Boyd: I do not have a view on that, to be perfectly frank.

The Convener: Does anybody else want to comment? The witnesses are all shaking their heads, Dennis.

Dennis Robertson: That is fine. We will just take it that that could be the case.

Alison Johnstone: The STUC's submission states:

"The STUC struggles to discern a genuine need for this Bill".

Is that still your position? I would also like a view from the others on the panel about the need for the bill.

Stephen Boyd: It is absolutely our position. I stress again that we have had extensive discussions with ministers, Russel Griggs as chair of the RRG and senior officials over a considerable time and we have never heard a rationale for the bill that is remotely compelling and would force us to change our mind in any way whatsoever. I stress that strongly.

Dave Watson: Our position is the same. The bill has been used to tidy other bits and pieces, which is fair enough. Such a bill is an opportunity to tidy other things that were waiting for a suitable opportunity to come along. However, we see no need for the main thrust of the bill on national standards, the direction power, planning fees and so on.

Legislators can give all sorts of people a range of powers, which may be good or bad, but what matters is whether it is possible to enforce the

regulation. The evidence, which we have shown clearly, is that our people are saying that they cannot enforce regulations as they stand. They are struggling to do that, not just because of the quantity of people but because, as the survey results that we published today show, they have lost experienced planners who had knowledge and experience in key areas. More junior staff are trying to cover those more senior roles.

That is the difficulty, which we have already seen in many other areas—for example, we have too few wages inspectors to enforce the minimum wage. I am afraid that the situation is the same in planning, and it is certainly the same in environmental health. Our surveys of our members have shown that time and again. By all means give regulators all the powers that you want but, if they are not given the resources to enforce the application of those powers, we are—frankly—just raising expectations that nobody can meet.

Stephen Boyd: I should have said that our concern is not only because we cannot see a rationale for the bill but because, in Scotland, we have pursued a distinct approach to better regulation for a number of years that has considerable buy-in from a range of stakeholders who have put a lot of time and effort into developing our different approach. Our concern is that the bill might drive a coach and horses through that. The consensus has been difficult to establish and maintain—it has required a lot of sensitive discussions across a range of areas—and the bill, particularly the economic duty, could upset that, which would be a real shame.

Trisha McAuley: For the reasons that I outlined about protecting vital services, I support what Stephen Boyd said, with the exception of the section on national standards. I support what he said in that the key thrust of section 1 and the bill's general principles being concerned with the economic duty skews regulation towards one aspect of the work of regulators, possibly at the expense of protecting some of their core functions.

10:45

Fraser Kelly: I come back to my original comments. The issue is the balance between an enforcement bill and an enabling bill.

We understand fully the principles behind the economic duty. Trisha McAuley's comments are fair in that that perhaps skews regulation in one direction. However, the first paragraph of the Scottish Government's national planning framework refers to a strategy for growth. We need to encourage greater economic growth and understand how the regulatory framework enables rather than constrains it.

We need to examine the existing legislation before we leap to new legislation. Many of our members struggle with the application of the existing legislation and existing regulatory frameworks. If they have to begin to understand other legislation that is introduced, they will have to devote their resources to that rather than the design of the services that communities and people need.

Our view always comes back to what local services should look like. If regulatory reform improves them, that is good. If it does not and leaves us with the status quo, it will not move us much further forward.

Margaret McDougall: I will take the witnesses back to planning. We have heard a lot about how underresourced planning departments are and about their capacity. Setting aside the underfunding of local authorities, should the fees for planning applications for wind farms, for example, be increased?

Dave Watson: I would not want to state a particular level. It is argued that planning fees seem to be in excess of the cost of administering a particular aspect of an application. However, those who pay planning fees need to recognise that the fees are not just for the administration of their planning applications. The planners' role is to take account of the wider community's interests. Therefore, planning fees are an important source of income to fund planning departments to have the necessary range of skills.

That is a challenge, particularly in new areas of which planning officers might need to have specialist expertise. Particular local authorities, such as Aberdeenshire Council, have lots of wind farm applications. Planners start to develop expertise, but they also have specialists in areas of expertise, such as the effect on the environment or on wildlife, that a generic planner might not have.

The value of fees is that they are an important contribution to the funding of planning departments so that they can—I emphasise this—not only respond to the developer's wishes but ensure that the whole community is engaged. I will not say that fees should be 10 per cent more or 10 per cent less. I do not know the answer to that, but they must be at a level that, together with general local authority funding, ensures that planning departments can carry out their function. If they cannot do that, there will be problems, which will have an impact on economic growth. We accept that.

The Convener: Fergus Ewing has indicated to us that the Scottish Government is minded to lodge a stage 2 amendment to adopt primary authority partnerships, which are a concept that

exists in England and Wales. Does anybody have a view on whether that measure should be in the bill or have concerns about it?

Stephen Boyd: I said at the start that my concern is that the proposal opens up another opportunity for regulatory arbitrage. Over time, companies might gravitate towards local authority areas where regulation is regarded as being less stringent. I am not saying that that is the bill's intention, but we have learned from regulation over the past couple of decades that there are often unintended consequences of such proposals, so I would be very concerned.

As part of the RRG's work, we have had officials up from the Department for Business, Innovation and Skills on a couple of occasions to talk through the primary authority system, and they have never been able to furnish us with any evidence of its benefits to sustainable economic growth over the longer term. In fact, their position on how it will work seems to be largely theoretical. We have seen little hard evidence about how it has benefited companies in practice.

Dave Watson: We were told about the proposal a couple of days ago, so we have been able only to discuss with colleagues down south their response to primary authority partnerships. The general view is that nobody has seen any great benefit from the system.

When somebody looks at the primary authority system, they assume initially that it is for the benefit of very big businesses that want consistency across a country as large and diverse as England but, actually, there seems to be a mix. About half the users are large firms with more than 250 employees but, other than that, a strange mix seems to be involved. It is not entirely clear who thinks that the system is a good thing. We have not seen much evidence about it.

Another thing that we need to consider is the impact that the proposal will have on the transferable food safety certificate, as it seems to chase a similar issue. Like Stephen Boyd, we would be concerned about the proposal.

We must ask what would be needed to administer primary authority partnerships. The UK Government has a better regulation unit. It is not quite a quango, but it is another great department full of civil servants deciding on and setting out guidance, instructions and everything else. It has a role in setting which authority is involved, so that is directed from the centre. In light of that, I suspect that the committee would want to know from the financial memorandum whether such centralisation would have cost implications.

Whether the system was directed from the centre or whether businesses had a choice, we would be concerned about the capacity in some

authorities to deal with it. In our written evidence on the transferable food safety certificate, we made the point that one of our concerns is that some travelling food units winter up in small local authority areas. A small authority such as South Ayrshire Council or Clackmannanshire Council could end up having quite a big burden of regulation to address with quite a small environmental health department.

Finally, I suggest that the committee should question whether a country the size of Scotland needs such a centralised approach and whether it is small enough for us to be able to achieve the purpose in a different way from the centralised, top-down approach that England has adopted in the primary authority partnership arrangements.

The Convener: If nobody wants to add anything, we will call a halt. I thank the witnesses very much for coming and giving their evidence, which was helpful to the committee.

We will suspend the meeting until 11 o'clock.

10:52

Meeting suspended.

10:58

On resuming—

The Convener: I welcome our second panel of witnesses on the Regulatory Reform (Scotland) Bill.

On my left, I welcome Colin Smith, who is director of Turley Associates and who is representing the Royal Institution of Chartered Surveyors; Malcolm Fraser, who is director of Malcolm Fraser Architects and is representing himself; Nancy Jamieson, who is vice-convenor of Heads of Planning Scotland's development management sub-committee; Alistair MacDonald, who is convenor of the Royal Town Planning Institute Scotland; and Alison Polson of Brodies LLP, who is representing Planning Aid for Scotland.

We have a large panel, so I ask members to direct questions to particular witnesses or members, rather than throwing questions open. If we throw them open, all five of you might want to answer the same question and we would be here until 3 o'clock. Could members keep their questions as short and concise as possible; if we could also have concise answers, that would be helpful.

We will start with planning fees, which is probably the biggest concern for most of the panel.

11:00

Rhoda Grant: My question is for Nancy Jamieson. Should fees be ring fenced to planning departments so that any fees that are charged go straight into resourcing that service?

Nancy Jamieson (Heads of Planning Scotland): That is a point of view. The Audit Commission's report in 2010 said that it was very keen that the planning service be fully funded by planning fees. The planning service has different aspects: there is development management, which deals with planning applications, and development planning, which deals with development plans, and there is no fee income from the latter. To make the whole service self-sustaining, which is what the Audit Commission says we should be working towards, we would need some sort of ring fencing. Whether that would be acceptable in the real world, where councils' budgets are diminishing, is another matter. Chief executives would have to take a view on that.

Rhoda Grant: What proportion of the cost of planning departments is currently paid for by fees? Where does the balance lie?

Nancy Jamieson: I am acting development management manager in the City of Edinburgh Council. We have an overall budget of about £7 million; about £4 million of that comes from planning fees, so the council has to make up the remainder. Some smaller councils perhaps are able to make up 100 per cent; that might just be the development management side. In Edinburgh, however, just over half the budget is provided by planning fees.

We have a lot of major planning applications in Edinburgh, so we need a big resource to deal with that. There are issues about the types of developments with which we deal; the smaller councils might not have so many major applications. The major applications service does not pay for itself to any extent, because the maximum fee in Scotland is tiny, compared with that in England.

Rhoda Grant: If that is the case, would the solution to the problem be to have the cost of the fee reflected in the cost of processing the applications, or to have either a general increase in fees or a level which you then top up, depending on the cost of the application?

Nancy Jamieson: The HOPS view is that the fees system in Scotland needs to be restructured. We had a 20 per cent increase in fees in April, which helped; but it does not get over the problem that we have, in that the maximum fee is about £19,000 for any application, unless it is for a mixed development. In England the fee can progress up to £250,000, as a maximum.

For some big developments in Edinburgh we have done exercises to show the costs in the application. An example is the proposed sick kids hospital at Little France, which was a planning permission in principle. We got a fee of about £8,000 for that application, but worked out that it cost us about £76,000 in officer time, so in some major applications there is a huge gap. We need to address that by restructuring fees so that we can fund both the pre-application advice—which at the moment we in Scotland do not charge for—and the actual processing of the application. We need a system that gives that proper pre-application advice so that we can make the planning application process as speedy as possible.

The Convener: Mike MacKenzie is muttering.

Mike MacKenzie: Thank you. I mutter a lot, as you may have noticed. However, I am happy to ask some questions. I recently read the first annual planning performance report, which makes pretty grim reading as it shows that significant numbers of applications were still in the system after 99 weeks and that less than a third of planning authorities used the planning system to negotiate better design standards. How can we improve planning in Scotland?

The Convener: Who is that question for?

Mike MacKenzie: It is for anybody—it is for all the panel. It is a pretty open question.

The Convener: Right. If it is going to the whole panel, can we please have fairly short answers? Who would like to start?

Malcolm Fraser (Malcolm Fraser Architects): Mr MacKenzie has asked a very big question. I suggest that the answer is not to try to force the issue and tell planning authorities how to do planning. I think that bureaucracy reacts poorly to that and, even, to the carrot-and-stick approach. I should say that I am very pleased to have been asked here to represent the applicant at the coalface, so to speak. Those of us at the coalface applaud the intentions of the carrot-and-stick approach, but bureaucracy finds its own way and there are all sorts of ways around that. We have a situation in which there are fewer planning applications and in which planners are even worried about their jobs. Applications have a tendency to take longer, just to ensure that planning is seen as important. I am not being particularly online with my colleagues' message here, but that is the way of the world and it is how things happen.

Despite the bad target performance that Mr MacKenzie mentioned, we have many situations in which nothing happens on a planning application but, when it is about to run out of time, we get a letter telling us of all the things that are wrong with

it, that it has been automatically turned down and that we are invited to make a second application, which of course is free. A planning authority then has the great benefit of deciding on two applications on time instead of deciding on one very late, which is where the application was going in the first place.

On the carrot-and-stick approach, we have had situations in which environmental impact assessments have been asked for, although I have not thought that they were necessary. However, requiring them of course allows the application decision time to be extended. It becomes difficult for me to think of ways of making a better application—and difficult for this committee to see better performance—when the planning authority's tendency is to make life more complicated on the ground, or to require us to jump through more hoops, which will then be taken seriously as somehow making the process more important. Again, I apologise to my colleagues on the panel, because that comment may appear to be unsupportive. However, what I describe is just the way of the world.

I like to think that less regulation and fewer attempts to make the planning process work better would enable heads of planning to take more responsibility. If each head of planning and local authority really wanted their authority to be the best at dealing efficiently with applications and seeing things happen more efficiently, that would be a marvellous way to go.

I am not sure how helpful those comments are—again, I apologise to colleagues. However, the planning system is not designed to assist itself. I think that sometimes less, rather than more, tampering can assist.

The Convener: Does Nancy Jamieson want to defend the planners?

Nancy Jamieson: I definitely do. One of the problems that we have just now is that the current system of performance recording is very crude. Basically, we have to give Victoria Quay all our figures. We have this rather odd instruction that if we think that the applicant has been sitting on the application and not doing anything, we have to tell the people in Victoria Quay how many weeks we think should be excluded from the performance time.

However, we do not know what the applicant has been doing with the application. We will know that we put the application through and that we have a decision in principle that might be subject to a legal agreement so that the infrastructure can be put in place to deliver the development; and we might know that the developer is quite happy with that and does not want to sign the legal agreement, which means that the decision is not

issued until the developer is willing to sign the legal agreement. That is one of the main causes of delay. We have at least 50 applications in our system that are sitting at “pending decision” because we are waiting on the developer to sign the legal agreement before we can issue the decision.

Mike MacKenzie: On that point, do you think that too much use is made of section 75 agreements? We have certainly taken evidence from witnesses to that effect.

Nancy Jamieson: In Edinburgh, we have an economic resilience plan so that, if there is a proposed section 75 agreement and the developer feels that it would make their development unviable, we discuss that with them, and we ask for the development viability appraisal. There have been a number of cases recently when we have taken applications back to committee and said, “No, you don't have to pay the contribution.” There is a very detailed circular on planning obligations and the specific circumstances in which a planning obligation—that is the correct term for a legal agreement—can be asked for. It must be related to a development and must be necessary for that development. Planning authorities in general must scrutinise that circular and ensure that they are requiring developer contributions in accordance with that circular. We must be clear about that.

The other thing that you mentioned was legacy cases—you are concerned that there are a lot of old applications in the system. One of the issues with the current planning legislation is that a planning authority has to determine an application. We are not allowed to just withdraw an application because we think that it has been in the system for too long. Planning authorities frequently send out letters to applicants saying, for example, that their application has been with the authority for five years, that they have tried to get amended plans, and asking whether the application can be withdrawn. However, the applicant might say that they want to keep it on the books. In Edinburgh, we have applications dating from 2002 that we have tried to get withdrawn, but the developer refuses.

There are many reasons for delays in the planning system. Sometimes it is difficult to get the big picture if we look just at bald statistics.

Mike MacKenzie: I am conscious of the fact that, as I understand it, the planning performance report was based on the planning performance framework that was drawn up by Heads of Planning. Despite the fact that it looks at quite a broad range of things other than efficiency and speed of determination, some of the results are very bad.

To return to my original question, given that Heads of Planning has drawn up the performance framework—with a view, I presume, to improving the system, by which I do not mean simply increasing the speed with which applications are processed—if that is not enough, what more do we need to do to improve the system? I am talking not just about efficiency, but about quality.

Nancy Jamieson: The planning performance framework was a joint framework between Heads of Planning Scotland and the Scottish Government. In 2012, for the first time, all the planning authorities submitted their planning performance frameworks. Just last week, we got a review of ours from the Scottish Government. We had not previously had any feedback on it. The picture that was given was that performance is about not just speed but a range of things that a planning authority must deliver. Is it open for business? How is it delivering sustainable economic growth? What initiatives does it have in place? I have not read all the other planning authorities' planning performance frameworks. The City of Edinburgh Council got a very good rating, but we need to work to improve.

We must be careful because, as Malcolm Fraser said, a planning authority could just refuse an application before the deadline and it would get a big green tick, because it had met its performance criteria. However, we in Heads of Planning are dedicated to delivering good customer service.

Mike MacKenzie: Surely local planning authorities would not massage statistics in the way that you suggest.

Nancy Jamieson: That would not be massaging the statistics; because we have to deal with an application within two months, it would be meeting the performance target that was set by the Scottish Government.

Mike MacKenzie: I am led to believe, however, that despite that statutory obligation to determine within two months, well over 50 per cent of applications are not determined within two months. That is not a new thing. There seems to have been a two-month determination period since I was a wee boy, yet we achieve less than 50 per cent of that. How do we improve it?

11:15

Nancy Jamieson: Where does that statistic come from?

Mike MacKenzie: It came from the first annual performance report, based on the HOPS planning performance framework.

Nancy Jamieson: The HOPS planning performance framework is a framework for every

planning authority. Each planning authority has its own planning performance framework.

Mike MacKenzie: Yes, but you will be aware that the first national planning performance report has been published, and the statistic came from that.

Nancy Jamieson: What development type is the 50 per cent? I do not recognise the figure.

Mike MacKenzie: It is actually a 5 per cent increase on what it was. Just over 50 per cent of all applications are now determined within the statutory two-month period. There has been a 5 per cent increase, so there is a bit of a pat on the back there, but it is still only 50 per cent.

Nancy Jamieson: Perhaps I can hand over to Alistair MacDonald to say something.

Alistair MacDonald (Royal Town Planning Institute Scotland): I was chair of Heads of Planning Scotland in 2011-12, so the first planning performance framework came through when I was chair. I was also head of planning for Glasgow City Council and I retired earlier this year.

We have to be very careful about the use of the statistics. When we, as local authorities, sent the statistics to Government, we warned the Government that the statistics would be skewed by old applications coming through the system. Our experience in Glasgow is exactly the same as the experience in Edinburgh. We tried to remove applications from the system and found that when our committees had resolved to grant consent—when applications were subject to a section 75 agreement—the delay started to build in. That has happened during the current recession, particularly in the house building industry. The house builders would be pleased that they had got to committee and a resolution to grant a consent. It means that consent is there—you cannot really take that away unless we, as planners, go back and recommend refusal of it.

We are then left with negotiating all the legalities. That could be financial contributions, which might be staged payments over a long period. I am thinking of 1,000 or 2,000 homes—those could be built over a 10 or 15-year period and might involve community facilities or roads infrastructure. All that has to be charted through a planning agreement, and that can take time.

We are also a hostage to legal transactions in buying of the land. The house builder, or others, might not want to go forward to that end point, which commits them to various items. We end up with a hiatus, in which the application lies there—it has not been withdrawn—and the house builder is ready to move on it. We then resolve the section 75 legal agreement and after it has been issued,

the planning consent is issued. That is what we are judged on.

Mike MacKenzie: Is it not the case, though, that a lot of planning authorities are still kind of in denial about the credit crunch and the different economic circumstances that we are now in? They are imposing section 75 agreements that may have been appropriate prior to the credit crunch but which are, post-credit crunch, not workable.

Alistair MacDonald: Again, I have to disagree with you. In 2008—

Mike MacKenzie: I am only asking the question.

Alistair MacDonald: In 2008, in Glasgow, we put reports up to committee to change how we deal with financial contributions. That happened throughout the country. We would not expect payment up front, because no profit had been made, so we would stagger payment, perhaps even right to the end of the project, before it came back into, say, community benefits. That was how we tried to assist developers. Like Nancy Jamieson, we queried whether we needed to go down the road of section 75 agreements. Is there another way that would lessen bureaucracy? We knew that the industry was going through a very hard time. My experience with Heads of Planning Scotland was that throughout the country we were looking at how we could assist people, particularly house builders, to get through the very difficult situation in which they found themselves.

Malcolm Fraser: Let me make two points. The issue that Alistair MacDonald and Nancy Jamieson brought up is a real one. It would be good if the committee challenged HOPS or Scottish Government planners to find a way of removing from the statistics applications in which the applicant is holding things up.

We all want accurate statistics on how many applications are not dealt with in time, which we can discuss with planning departments. Perhaps the current situation means that the figure is so fuzzy that it can be defended; departments can say, "That is not really how many applications have been delayed." Challenging the figures and ascertaining how to get figures that accurately reflect how many applications planning departments, as opposed to applicants, are not dealing with in time would be a good, simple, straightforward output for the committee.

Mike MacKenzie: My question was really about how we can improve the planning system. It is obvious from the planning performance annual report that some planning authorities are pretty good and others are not as good. I have heard all kinds of reasons why the system is not as good as we want it to be. How can we improve it?

Malcolm Fraser: I appreciate that that is your main question, but I want to make my second point, because section 75 agreements have been floating about in the discussion.

I should have said that I chair the Government's national review of town centres, so I am also here with that hat on. One of the things that we are trying to do is to talk about section 75 agreements, because out-of-town developments carry a substantial burden to the public purse if a section 75 agreement is not properly applied. I am talking about infrastructure such as sewers, roads, roundabouts, parks and new schools.

If we say that economic development is imperative, we might find that the public purse will have to bear the cost not only of building all those things but of closing down the old school in the town centre, which could have been sustained if the proper cost had been applied to the development and the development was therefore pushed into town. I ask the committee to be aware that the economic imperative should not mean that taxpayers have to fund part of the cost of development, when in-town development would have assisted the public purse.

Alison Polson (Planning Aid for Scotland): Planning Aid's view is that improvement happens in the system when people understand how it works. To some extent, to talk about how the figures appear to show that decisions take much longer when a section 75 agreement is involved is to misunderstand how the system works to deliver what everyone wants, at the end of the day.

Communities, which are very much integrated into PAS's work, want to understand what infrastructure will be delivered and what benefits will come as a result of a development. Developers, who have difficulty securing funding in the current market, see it as an advantage to have a "minded to grant" decision, because that enables them to shop around and to work out how to deliver the development on the ground. Such a decision is a plus for developers, who do not actually want the planning permission, because that comes with a three-year time limit for implementation. With big developments, permission comes with expensive conditions that must be met, many of which will be to do with infrastructure.

Whether we are talking about conditions or section 75 agreements, the system is better than it used to be, because reforms have meant that planning agreements are open to challenge by way of modification and discharge. Post-reform, even the discussions that take place very much concentrate on what relates to the development that is being sought and what will be delivered—

Mike MacKenzie: You have made your point. It is all the developers' fault.

Alison Polson: No, it is not necessarily—

Mike MacKenzie: Is that not your point? Are you not saying that developers are exploiting that?

Alison Polson: It is about understanding the system. Everyone is getting something out of the so-called delay, because it suits them.

Mike MacKenzie: I am a wee bit disappointed because I am not hearing much about how we can make improvements. I will rephrase the question and talk about judging the system by its outcomes.

As a result of the modern planning regime that was ushered in by the Town and Country Planning Act 1947, I see many listed buildings and conservation areas that I think we all agree are terrific. However, other than Malcolm Fraser's work, where will the listed buildings and conservation areas of tomorrow come from? Has the system succeeded in any way in delivering the quality of built environment that all of us would wish it to deliver? If it delivered a built environment of genuine quality, I, for one, would be happy to wait a bit longer and expect applications to take longer. However, it seems to me that it does not. How do we improve that?

The Convener: That is a broad question. We are focusing on the provisions of the bill, so I ask the witnesses to try to focus in their responses on the issue in the bill, which is to do with planning fees. This is not a discussion about how to improve the planning system in general, because that is beyond the remit of the bill.

Colin Smith (Royal Institution of Chartered Surveyors): I will try to identify some positive measures for improvement.

Part of pushing culture change towards delivery and improvement concerns fees. I was interested to hear Nancy Jamieson's figures on the major applications in Edinburgh, which is an example of best practice in applying culture change and focusing on the major developments that will deliver economic growth.

There are many good examples in Edinburgh of very high-quality buildings and projects not far from the Parliament. The planning department provides a high level of service that costs a lot more than it gets in fees. Clients with whom we have worked on delivering projects in the city centre would be perfectly willing to pay a higher fee for the standard of service that they get in Edinburgh on major applications. That would be an example of varying fees up on good performance rather than varying them down on poor performance.

There is incredible scope to share best practice—there is a lot of good practice around across authorities—and even the potential to consider sharing services where one authority has the scope to sustain a service that is required only occasionally by other authorities. Those measures might allow resources to be directed most appropriately in different authorities.

Chic Brodie: Good morning. Malcolm Fraser's initial comment was like a breath of fresh air. We were told earlier that planning authorities were constrained, and he said that some planners are worried about their jobs. The disconnect in the information that we are getting confirms that we need some sort of disciplined regulation in the system.

The penultimate paragraph of Mr Smith's excellent submission mentions how councils that are working well and those that are not working well might not

"expect to receive the same level of fee."

Planning Aid Scotland's submission says:

"The efficient planning system"—

we can all question whether it is efficient or not—

"promoted since 2006 has generally been predicated on the promoting and sharing of good practice".

My experience of going round the councils in South Scotland is that they do not share good practice. In fact, their interpretations on wind farm developments and housing developments are not the same. It comes down very much to the local planner. Is that not a strong argument for having meaningful regulatory reform, substantiated and supported by a ministerial code of practice, that will ensure some level of consistency? As I said to the earlier panel of witnesses, that would take out some of the angst that goes on between communities and local authorities, between developers and local authorities, between communities and developers and between local authorities and local authorities.

11:30

It is a no-brainer. The problem, notwithstanding the fact that we do not—and apparently cannot—measure anything, is that we do not have in place at least some sort of framework in which we can operate with flexibility but with similar objectives in mind.

Malcolm Fraser: On wind farms, it is certainly a no-brainer. The Government should set a context and not allow applications to be argued through the planning system, in which lawyers and everyone else go through enormous hoops only for different and bizarre decisions to be made. The context should be set nationally.

On the wider point, the convener is right to bring us back to the central proposition, but I suggest that it is no different from Mr MacKenzie's prompting that this is really about delivering a more efficient and cost-effective planning system. We would get better conservation areas and more of them in the future if planning restricted itself to planning. Part of the problem and part of the frustration for architects is that we are not challenged to come forward with beautiful, new, extraordinary ways of doing things. There is no joy in the system; it is planned from top to bottom.

Planning should set the context for development; it should talk about gathering places, roots, movement, general envelope, height and so on, and the mix. Architects, designers and developers should be challenged to respond to that. Instead, I have had very simple planning applications that have been stuck for six months while a planning officer tells me how to design. I find that quite frustrating. The planning officer draws plans and says what this should be, what material should be used, how the window should join with the wall and so on.

All of that should go. That would make the planning system cheaper, more efficient and much quicker. Architects, designers and developers would have to think again about how to make beautiful and appropriate buildings in Scotland. The system does not design those; the system should set the context for them and encourage architects and developers to bring them forward.

Alistair MacDonald: I would not disagree with Malcolm Fraser's last point. Unfortunately, not all the plans that come across the table from applicants are as good as Malcolm's architecture, so they need to be worked on.

Having said that, I come back to resources. In a Glasgow context, and no doubt also in an Edinburgh context, large authorities can resource such work by having architects and landscape architects in the team. They work with the applicants and give them design advice. In Glasgow—the practice has now spread to other parts of Scotland—there are urban design reviews, whereby major applications can go through a design review process that can inform the agent or the applicant who comes forward with a planning application. Various mechanisms can be used to improve the outcome. Mr MacKenzie talked about how to get quality into the system and thereby improve the place making that we get in the end.

On Mr Brodie's point, each of the 32 local planning authorities has either one development plan or its own individual development plans within its area. That relates back—

Chic Brodie: Can I stop you? Do we have too many local authorities?

The Convener: That is a little bit wide of the mark.

Chic Brodie: No, it is not.

The Convener: It is wide of the mark for the bill. By all means answer the question, Mr MacDonald, but it is not relevant to the bill.

Alistair MacDonald: I am sorry but, in my position at the moment, I am reluctant to answer that question.

Chic Brodie: That is fine.

Alistair MacDonald: There is then a democratic process with local consultation and the planning committee approves the local plan. A different emphasis in how a rural authority, an urban authority or a mid-range authority approaches a particular type of application might account for some of the apparent disparity that you have experienced in the south of the country. I cannot say that for sure, but I hope that all planning authorities aim to have up-to-date development plans. That is important, as it guides development and it guides people such as Malcolm Fraser and RICS members when they invest in an area.

Planners recognise the importance of economic investment for regeneration of an area. I spent more than 30 years working in Glasgow and we were desperate to get the city regenerated; that was core to our business. Planners think about regeneration, economic development and assisting people in that process. The process can be very complicated. The various add-ons that come with a planning application have been mentioned. Some of the add-ons come from national legislation, but European legislation also guides that. There is, in effect, no way out of that; it has to be part and parcel of the application.

Nancy Jamieson: It is difficult to provide a picture of what it is like to work in a planning service that delivers development. For example, for the Craighouse development that has been in the news recently, we spent a year giving pre-application advice, but the application that was submitted just was not acceptable. I hear what Malcolm Fraser says—I have worked with him on many schemes in Edinburgh, and he is great to work with—but there are an awful lot of architects out there who are difficult to deal with because their clients want a level of development on the site that is not acceptable.

The Craighouse development includes listed buildings, so our listed buildings staff have been involved. The site includes an area of great landscape value, so our nature conservation people and landscape architects have been involved. Our designers have also been involved

because the proposed buildings were too high and would have impacted on the setting of the listed building. We have been working for about nine months now trying to get an acceptable solution for that site. We also have a community that wants to have its say—we have about 1,000 objections to the application—so it is not easy managing some of these bigger applications.

Colin Smith is right that Edinburgh has been at the forefront of working with developers on processing agreements. We see that as a way forward for delivering major applications within a timescale that is agreed with the developer. The key is that we need to work co-operatively with developers to deliver the type of development that the country needs.

However, an authority such as Shetland Islands Council will have only six or seven people in its planning service. If Shetland receives a major application for an oil development, it needs to take all its planners off the smaller developments and put them all on to that one development. That is what it is like in practice.

In Edinburgh, we have our own resourcing problems. On your question about what can be done to provide a better service, we seriously need to look at the resourcing of planning authorities to ensure that we have the people in place. In Edinburgh, we have two teams that deal with major developments and we receive about 30 major applications a year. In the background, we will have discussions on at least another 30 applications at pre-application stage. When the team leaders tell me that we have another pre-application discussion coming forward, my teams are dealing with so many other things that I do not know who I will put on to that. There is a resourcing issue. We need more planners on the ground if we are to be able to deliver that excellent service.

Alison Polson: I agree that there is a broader resourcing issue. As Nancy Jamieson said, planners must not only co-operate with the developers on the ground but take on board the community's interest in the application. Planning reform was predicated on that—there is no third-party right of appeal—so we need to take the community with us. Both the developer and the planning authority need to explain what their roles are and what is happening. That takes investment, as it involves an additional burden on the decision maker and on the applicant. If we get that wrong, that will make the application process last longer because people will always look for what challenges they can bring. The game plan is to make the process as open as possible and allow people to have their say at the start, so that the application can be refined at that point, rather than people discovering only halfway through and then

lobbying in any challenge that they can to hold up the application.

Chic Brodie: I will come back to the issue of investment versus efficiency in a minute.

Malcolm Fraser: Having made my pawky comments, let me now make some positive ones. My wife has an architectural practice, too, and she does a lot of work in Scotland and some work in England. I work with large developers that are based in England but work in both England and Scotland.

Our practice is far better than English practice; Scotland is starting from a much more positive situation. We certainly should not think that the system is broken and that everything is in a terrible mess. My developers say that, compared with England, this is a fantastic place to work; in fact, they prefer working in Scotland because they have better pre-application discussions, the context is set in a better way and the process is run more efficiently. My wife, who does domestic small works, says that it is impossible to talk to a planner in England and that the situation there is very difficult. I just want to make a little positive point that, in seeking to improve the system, we are starting from a relatively positive place.

With regard to the need to set the context, my experience is that Edinburgh does that sort of thing well. It has good design officers and landscape officers, but the important point is that they are involved in setting the context and therefore do not fiddle with things afterwards. The council should set the context and then should stand back to a certain extent and allow developers and their architects to work through the system. Although we have suggested that this approach is good for practices such as mine, I should point out that many developers out there are saying, "Listen—the council does all that. It has design officers; amenity groups say this and we change things like that; and people input into the process. We don't want a good architect or designer; we want an architect who'll do something weak enough to bend in the wind." As a result, we end up with developments—and we can see a lot not very far from here—that do their very best to be as dull as possible so that they can be kicked about by everyone along the way.

Coming back to Mr Brodie's question, I do not think that there are too many councils, but I certainly believe that the good practice in the larger councils needs to be disseminated better to ensure that other councils are aware of it. The important point is to set the context in a way that does not close down any wonderful, marvellous things that might come along or does not make developers think that the design is done for them. Moreover, the context should be set in quite an open way. I know that that will be quite difficult, but

I go back to my point that this is all about roots, gathering places, connectivity, sunshine and views of things. Planners need to challenge developers to make places that not only are full of amenity and do certain basic things but make life joyful for the people who use them, because that sort of planning context would make developers think, "I don't quite understand what this means. Perhaps we need Malcolm Fraser, Elder and Cannon, Sutherland Hussey or whoever." There are tons of architects out there who are as good as me but who are not getting the jobs and we want them to come forward and make the places that we will be proud of in future.

Colin Smith: I agree with Alison Polson that there is a resourcing issue. If we are to have a system that focuses resources on major applications, which of course have the biggest economic, social and design impact, I think that there is a reasonable case for having differential fees to reflect the resources that planning authorities require to put into that work.

I also agree with Malcolm Fraser's comments. An English developer client who was developing in Edinburgh for the first time was initially sceptical about the formality of the pre-application consultation but now regards the process as time well spent. They can raise and deal with issues and engage with the community, societies and everyone else to ensure that what is ultimately submitted is as well thought through as possible.

As for the question whether there are too many councils, my answer would be yes.

Chic Brodie: I hear what you have all said about resourcing, but I robustly question the efficiencies that can be made in that respect. I do not want to discuss the number of single turbines in the south of Scotland and how much time they have taken up vis-à-vis what we should have been doing, but I note that in its submission the RTPI calls itself

"the champion of planning and the planning profession"

partly through maintaining

"high standards of planning education".

My question is about direct investment in that sort of thing rather than direct investment to provide additional resources. Are we doing enough on planning education? If we introduce some discipline in terms of regulatory reform and training, and ensure that there is good communication, not just among planners but among planners, developers and local authorities, we might not require the level of resourcing investment that some people are calling for. What are the standards that are applied?

The Convener: I am not sure that planning education is terribly relevant to the bill, even

though it is mentioned in the RTPI's submission, so I ask Mr MacDonald to address the issue quickly.

11:45

Alistair MacDonald: We accredit the courses across the UK that provide training for planners, whether at postgraduate or undergraduate level. In my experience, the young planners who are coming through—as RTPI Scotland, we work with an association of young planners—are impressive: they are highly enthusiastic and highly skilled. I have strong hopes that the graduates and the young planners who are coming through at the moment will serve the country well.

Chic Brodie: When the bill is implemented, I presume that it will be part of the formal education process.

Alistair MacDonald: It will be part and parcel of their education in planning and other Government matters.

I would like to pick up on Malcolm Fraser's point about English investment companies coming to Scotland. In my experience, the reaction from the planning service has been entirely positive. Many of those companies have to pay several thousand pounds for pre-application discussions with some of the councils down south. Westminster City Council, for example, charges thousands of pounds for a pre-application discussion. Many companies complain that they cannot meet the planning authorities.

My concern is that if there are not resources for the planning authorities in Scotland or if resources are taken away from them because they are underperforming, we might see a situation in which an authority—as it can do under the legislation, as was mentioned earlier—simply determines an application within the two-month period. The resources that go into the pre-application process might just disappear. The new Southern general that is being built in Glasgow involved a year of pre-application discussion. Post-consent, it took six months to deal with all the attached conditions. A tremendous amount of resource goes into some large applications. My concern is that if we start to penalise authorities by taking away the fee, they may react by saying that they cannot resource all the good add-ons that go with a culture of welcoming investment.

Margaret McDougall: You have hit on the question that I was going to ask about penalising underperforming authorities. Do the other members of the panel agree with Mr MacDonald that it would be wrong to penalise authorities that underperform? How do you think that underperforming authorities should be dealt with? What would be best practice when it comes to

encouraging them to perform better? In addition, how should performance be measured?

Alistair MacDonald: The planning performance framework that was brought out last year represented a first step in the process of establishing a broad range of qualities for planning authorities to be measured against. I think that that is the test bed that we need to start working from. Although problems will be thrown up with the stats, that will gradually work its way through the system. Heads of Planning has responsibility for the framework, as it brought it forward; Nancy Jamieson can speak about that. I think that Heads of Planning can act as a mentor and assist by passing on good practice by the exemplar authorities to smaller authorities, which will benefit from that experience.

The Government could do more in that regard, too. Sadly, the Improvement Service funding for training in planning, which had been provided for the past three or four years, ceased this year. That was quite important—local authorities could get 50 or 25 per cent funding to assist with the training of their staff. In Glasgow, we used that enormously. We put staff through training programmes across the country. The removal of that programme is an issue for the continued provision of such training.

In addition, local authorities need to bring in new graduates. That is what Mr Brodie was talking about. Succession planning will help to bring in new ideas.

The Convener: Does anyone else want to comment on the reduction in fees?

Nancy Jamieson: The reduction in fees would have a major impact on some authorities. Planning is not all about electronic working—you cannot get round the need to have people on the ground to assess the application. The case officer must visit the site, look at all the policies and make an assessment. A machine cannot do that.

It was asked why we all do things differently. The number of planning regulations and circulars are a complete minefield. I think that we are to get new environmental impact assessment amendments, which will make life even more difficult. We have also had to start analysing planning applications to take account of equalities and human rights. Over the years, more has been added to the planning system, and it is difficult to do all those extra things and speed up the process at the same time.

The main action that we can take is to prioritise the major applications. Most authorities deal quickly with householder applications. The Scottish Government has tried to take a lot of householder applications out of the system. That has been successful in some areas, but it has

made a minimal difference in Edinburgh because of all the conservation areas.

The Scottish Government could assist us by taking out of the system applications that do not require planning authority input because they do not have any added value, such as smaller developments. That would increase the speed of decision making and allow us to prioritise.

Authorities could do other things, such as in relation to pre-application advice. At the moment, most authorities give pre-application advice on all types of developments, whether they are large or small. Some councils have stopped their pre-application advice service on, for example, householder applications for house extensions, and planning authorities could do the same. I am not convinced that that would be good customer service, but it would speed up the process.

We try to learn from each other as much as possible. For example, Heads of Planning Scotland's development management sub-committee meets every three months; 20 to 25 authorities are represented and share best practice.

Edinburgh benchmarks with Glasgow, Aberdeen and Dundee. We meet every six months. We look at how we deal with issues, compare figures—Glasgow and Edinburgh usually look at who is doing best on householder developments; I think that Edinburgh is on top at the moment—and why we are getting different results. For example, although Aberdeen might score lower on its speed of decision making, the authority is clear that, when it is dealing with an application and it can see how to make amendments that are acceptable rather than refuse it, it will go over the time target to achieve that because it thinks that that is good customer service.

Therefore, there are things that we can do, but they are difficult.

Alison Polson: Planning Aid is concerned about those very things, particularly if they squeeze community engagement right from the start. It is vital that the community is involved and gets a chance in the pre-app stage to understand what the applications are about. If people do not get that chance, the risk is that there will be more challenges that have to go through the system.

The system should be about incentivising rather than penalising. How to go about incentivising is more a human element—it is about the morale in planning authorities. No one wants planners to feel stigmatised when they are doing their job, so they need to be educated and encouraged to do it better and to learn from best practice elsewhere.

I wanted to mention one other thing, but it has escaped my mind.

The Convener: We will come back to you if you remember.

Colin Smith: The RICS supports the connection between planning fees and performance. It is far better to reward good performance, best practice and delivery, and there are a lot of good examples of that in our experience and from elsewhere.

There is no issue with the principal of penalising long-running demonstrably poor performance in some way by reduced fees, but assessing, justifying and ultimately implementing that is a complete minefield, given the huge fog around how application determination is assessed. The issue includes the number of applications that are sitting in the system because a site is going nowhere, the company is in administration and the bank is in control—the legal agreement might have been drafted, but no one will sign it because there is no one to sign it. Applications can run on for very good reason if everyone is working towards a solution.

It is a very difficult area in which to assess, but in principal the RICS would support a link between performance and fees. We believe that it is better to reward good performance, particularly on major applications, which are the most important, but, if there was persistent poor performance and lack of effort to improve, the RICS would support a reduction in fees, tied to instigation of measures to improve that performance.

Malcolm Fraser: The question is of incentivisation and clarity of statistics. It would be positive if councils were allowed not to record applications that applicants are sitting on.

It would be very nice to see incentives or rewards for councils to not immediately reach for environmental impact assessments. I appreciate that an external agency advises on that issue, but councils are as much a part of the bureaucracy and are patted on the head for being extra careful. It would be good if local authorities and planning departments did not necessarily go to a Scottish historic environment policy—SHEP—test for various things, reach for more legislation or say, “We need to do this, so it will take longer, but we are allowed to take longer.” It would be nice if authorities were incentivised to deal with things quickly and simply and were rewarded for doing that.

Dennis Robertson: Would it not be better to have a consistent approach across all the planning authorities? That would aid the measurement of performance. If there was a consistent approach to planning, the measurement would give the like for like. At the moment, the situation is a mess.

Alison Polson: That is because each planning authority has its own development plan. That is what planning reform is about: local decision

making. That is why there is a local review body. It is not pan-Scotland.

Dennis Robertson: In a sense, with the bill we are looking for consistency of approach.

Alison Polson: Planning Aid would like consistency, but the system is set up as it is.

Nancy Jamieson: We do have consistency: how we deal with planning applications is set out in regulations, which say what a valid application is, how long there is to deal with it and what form the decision letter should take. It is the assessment of the application that will be different in each planning authority, because as Alison Polson says—

Dennis Robertson: Is it that the application is not happening consistently?

Nancy Jamieson: Do you mean processing of applications?

Dennis Robertson: Yes.

Nancy Jamieson: It is pretty straightforward, really. Once we receive the application, we make sure that it is a valid application. One of our big problems is that about 30 per cent of applications are not valid when they are submitted to the planning authority—we then have to chase up all the things that are needed to make it a valid application. After that, we assign the application to a case officer, and we have to do neighbour notification and arrange advertising. The case officer visits the site and we have to look at and deal with all the representations that come in. The application has to be assessed against the development plan.

The whole process is set out in regulations, but the assessment part—where we are deciding whether an application complies with the development plan—can be the crunch point. Further, there might be lots of representations on a scheme and, if so, we will have to decide whether something is a material planning consideration and whether we have to ask for amendments. If we decide that we have to do so, we have to discuss those amendments with the applicant and negotiate and agree a scheme before, finally, dealing with it under delegated powers or taking it to a committee that might take a different view.

12:00

Margaret McDougall: Do you think that monitoring and scrutinising performance should be the role of local authorities and councillors, or should it be done by the Scottish Government?

Nancy Jamieson: It is probably best if Malcolm Fraser answers that.

Malcolm Fraser: It should be done by the Scottish Government. It is interesting to think about what things should be devolved downwards, with more local representation, and what things should be dealt with at a higher level. National indicators and guidance are the sort of things that are best done by central Government, which can spank bottoms and skelp heids when necessary, and perhaps shame organisations in certain situations.

Quite interesting and useful things are being said about what can be taken out of the planning system to ensure that it is more efficient. Those things include the applications for extensions to the backs of people's houses and for wind farms; the fiddling with applications that some authorities still do; and the tendency to overdesign and to overcontrol people like me or, worse, architects—we will never get better architects involved if we always say, "We are going to compensate for you." I suggest that this committee should recommend that a lot of stuff should not be in the planning system. Certain things, such as wind farms, can be dealt with at a national level, and other things can be either dealt with more simply in the planning system or not dealt with by the planning system at all.

The issue is about setting the context. It is quite right that all our resources should be focused and that, thereafter, planners should not let go of section 75 obligations, in order to ensure that, for example, the necessary public routes across a site or public squares in the middle of a development are included. Planners need to hold on to that duty and be fully resourced to ensure that they can make clear the obligations at the start of the application and to enforce and police the situation during the process. Other things are better left to others.

Nancy Jamieson: Like most councils, we put our planning performance framework to our planning committee. If our performance was not good, it would have something to say about it. There is scrutiny at council level, and we also have to provide the statistics to the Scottish Government.

We see the figures once the number crunching has been done, but we do not get a lot of reaction. The figures that are published are just bald figures. As Alistair MacDonald said, legacy applications can completely skew the figures, and last year the Edinburgh statistics did not look good. At that point, we were not allowed to exclude anything, so there were headlines in the papers about how poorly Edinburgh was performing when, actually, the reason for the figures was simply that there were two or three very old applications in which the legal agreements had not been signed.

There has to be scrutiny at local level, and it is useful for there to be some scrutiny at national level. However, that has to be on the basis of what Malcolm Fraser was talking about—actual statistics, not potentially skewed figures.

Alistair MacDonald: There is no doubt that we need national scrutiny of how well legislation is working, as that represents Scotland to the wider world and is important for inward investment.

At local level, there is no doubt that the planning service needs to be fully accountable to the planning committee chairs. All council services have to be accountable, and planning is no exception.

The planning performance framework is now used by planning authorities across the country; the framework is taken to committee members and they are shown the performance for that particular year. Nancy Jamieson is right that, if the service is not performing to targets that the chief executive has set, the officials will be asked questions about what is happening to their service.

That process is also a good way of promoting planning in local planning authorities. Obviously, I would say this because I am from the RTPi, but I think that we need to promote planning further up the hierarchy in authorities to ensure that the development plan is not just for the planning service but for the whole local authority service and that, for example, the education authority and social services buy into it.

Malcolm Fraser made a point earlier about whether we need to close a school in a town centre or whether it could be a focal point for bringing services back into the town centre rather than pushing them out of town. The development plan can be an all-encompassing umbrella in that sense. Planning must be able to bring such plans through at a higher level in a local authority. I would naturally say that, but that is my view.

The Convener: Okay. We will move on to questions from Alison Johnstone.

Alison Johnstone: It is unclear at the moment whether section 4 of the bill, on the regulator's duty in respect of sustainable economic growth, will apply to planning authorities. Do panel members have a view on whether the sustainable economic growth duty should apply to planning authorities? If you think that it should, what issues might that raise? I ask Nancy Jamieson to answer first, and then Alistair MacDonald and Colin Smith.

Nancy Jamieson: I guess that my answer comes back to what we said earlier, in that planning is regulated by strata of different regulations and acts. The Scottish planning policy—especially the new draft policy that is going through its consultation process just now—is

very much focused on sustainable economic growth. That is something that we will have to take on board as we progress. I think that planners often forget about sustainable economic growth when trying to balance all the different policies that they deal with.

Alistair MacDonald: I would say that our job is to come forward with sustainable development for the benefit of the country. That cannot be left out of planning: it must be part and parcel of the core response for any planning application. I think that you will see more and more councils looking at a sustainable economic model. They will have to consider that as part of their overall response to a particular application. There are checks and balances in the system, and one will be consideration of sustainable economic growth.

Colin Smith: The delivery of sustainable economic growth is critical because Scotland competes with other countries and Edinburgh and Glasgow, for example, compete with Bristol and Manchester. If we do not compete and attract business investment in a sustainable way, it will go elsewhere. There needs to be a real focus on the delivery of sustainable economic growth. In all the regulatory functions—again, there is a link to planning fees—we need to focus on competing in a sustainable way.

Alison Johnstone: Is the panel of the view that the duty should apply to planning authorities?

Nancy Jamieson: Yes.

Alison Polson: Yes.

Alison Johnstone: We have heard from witnesses previously that the duty may be a lawyers' charter. I was on the planning committee in Edinburgh and can remember an example of planners recommending refusal for a supermarket development. In that case, the councillors gave it the go ahead and did not heed the planners' recommendation. If such an application was refused in the future, would the developer be more likely to come back and say that the council had a duty to promote economic growth and that it was clearly not doing it in that case? How do you weigh up other considerations if you have conflicting duties?

Nancy Jamieson: One of the complex duties on the planner is to weigh up all the many different aspects, including the possible economic benefits. For instance, for a recent application for a hotel down at Crewe Toll in Edinburgh, concerns were raised about whether the amount of parking on site was sustainable, because it would encourage people to use their cars, and whether there would be issues about air quality.

We had a big debate on whether to refuse the application, but we weighed up all the different

aspects and decided that, because the hotel would provide economic growth on that site, we would recommend approval despite the sustainability issues. The duty to promote sustainable economic growth would be just one of various factors that a planner must weigh up in deciding whether one issue outweighs all the other issues.

Alistair MacDonald: You gave the example of an out-of-town superstore, which might contend that its application should be granted because it would provide economic development and bring jobs to the area. The downside to such a development might be that those jobs are taken from other businesses, which might then close because of that potentially unsustainable activity. That is part and parcel of looking at the best fit and the best location for such a facility.

Alison Johnstone: If planners already take sustainable economic development into account anyway, is it necessary to legislate for the duty? I would like to understand how the bill will make planning better.

Alison Polson: Including the duty in the bill will raise the profile of the issue.

Alison Johnstone: I have a concern that the bill may lead to the economic duty overriding other concerns. Do you share that concern?

Malcolm Fraser: I do. The issue comes down to how you define the term "sustainable", which is often defined in a way that is exactly the opposite of what it means—it is a classic example of a word that has been turned into its doublespeak opposite.

The superstore example is extraordinary. No one can argue that a superstore will create any more wealth in Scotland. There is a finite amount of shopping that goes on. If we put more shopping in one place, we will take it from another place. The issue is not even whether the store moves from the town centre, because the simple fact is that just moving the economic activity elsewhere means that somewhere else in Scotland will suffer.

Development should create wealth, creativity, places for people, homes and good environments. All of that is economic development. However, we need to be very careful about how we define the term "sustainable", because those who are doing unsustainable things will understand that they need to couch their argument in such a way that enables them to continue doing them. Development for development's sake is not sustainable. We should not use the word "sustainable" unless we define it in an appropriate way.

Alistair MacDonald: Malcolm Fraser's point is right. If people want to invest in an area by, for example, opening a new centre that creates 500

jobs, they will look at the quality of life in the area, the transport connections, the provision of housing, the provision of shopping and the local environment. All those things become part of their decision, which is based not just on the sheer economics but on the place where their employees will be well looked after.

I can think of examples in which business development has struggled because it was not located within or near a town centre. At lunch time, people want to go out to shop. Most households now work, so people often need to go out shopping for their family during the day or after hours. They also go out to socialise, and people stay within the same village, town or city. There is a difficulty if businesses are located outwith towns: those places are not sustainable in the long run.

For some considerable time, planners have been making judgment calls on sustainable economic development. We do that at the moment, so I would not have a fear that including the duty in statute would cause a difficulty.

Colin Smith: Having the duty up front might lead to an improved level of evidence. Rather than promoting developments purely on the basis of the level of investment involved or the fact that they will create X number of jobs, the duty will drive the provision of evidence that shows that a development will provide a net economic impact and not just a headline figure. There will be a better understanding of what the actual economic impact might be.

12:15

Alison Johnstone: I have a final question for Nancy Jamieson, who deals with planning on a daily basis. How will the bill make life easier for you?

Nancy Jamieson: We already have discussions with our economic development colleagues about how they can assist us in the planning process. If we have a major development, we need to know what its economic impacts are. Perhaps the bill puts that into a more regulatory function and we will be able to incorporate it into the report.

Marco Biagi: My question follows on from Alison Johnstone's question about what the sustainable economic growth duty does. It is often analysed in terms of a potential tension with the environment or in terms of the legitimacy of the economic dimension, and that is how you all looked at it. Is there any potential tension between the duty and the preservation of the built environment and heritage? Perhaps Malcolm Fraser would be a good person to answer that.

Malcolm Fraser: Yes, there is. You are quite right. There are all sorts of tensions. I continually

make the point about VAT. Powers over that are unfortunately not available to us, but at present, if we repair and renew a building, we are charged 20 per cent VAT, but if we knock it down and stick up a new building, even on the green belt, it is 0 per cent. There is a massive economic lever that is used again repairing and renewing buildings, which is a simple, obvious and not just sustainable but heritage-led approach.

I would like to see more old buildings being joyfully renewed—that is what we do, and we need more people doing that—and not knocked about in a horrible way. We want the old church halls to be renewed, and if they have to be a Tesco, so be it. It would be nice to think that a supermarket might want a site in town that has a building that they could adapt, and that they will relax their standards. Planners could bundle up sites and take them to the market. Part of what my town centre review is trying to do is to use business rates incentivisation to get councils to parcel up sites and take them to the market. We are trying to get people into towns, to bring commercial uses such as offices and leisure centres into old buildings, to use the old fabric and to join up the footfall in communities. There are definitely tensions around that.

We need planners to relax about these things and not to think, "This is a listed building, so I'm going to make sure that not a thing is changed." That still happens in some of the less celebrated smaller councils, which perhaps need to be grooved up a little and brought into the modern world. [*Laughter.*] I might be going off at a tangent a little, but in response to your question, I think that the bill can perhaps be used to remind councils that old buildings and conservation areas are not places where rings of steel are put up and development is discouraged but places whose virtues should encourage investment and places where planners should be open, setting the context but letting developers come forward with joyful renewals that assist everyone's economic development.

Colin Smith: There is a link between economic growth and heritage. One of the principles in the SHEP test for demolition of listed buildings speaks directly about viability. There is a real link there between economic testing and viability testing, so that raises a heritage issue.

Alistair MacDonald: I like Malcolm Fraser's comments about the joyful reuse of listed buildings. The skill of the architect can bring some modernity to an old building such that it can still be recognised but we can play about with it. Buildings do not have to be regarded as sacrosanct. We have lots of building stock in the country that can successfully lend itself to that reuse. I wholeheartedly support Malcolm's view that we should

use our built environment in an inventive and joyful manner.

Alison Polson: The bill gives with one hand and it also emphasises the element of balance, which is what planning is about. It states:

“In exercising its regulatory functions, each regulator must contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so.”

If there are other things to be taken into account, it emphasises the balance but puts the spotlight on the fact that all this is about development—about things that are actually happening. Otherwise, all these things are rules stopping things happening.

Alistair MacDonald: I give you the example of a lovely listed façade that remained propped up on a street. Various reports said that it could not be repaired and that, if anyone tried to repair it, it would fall down. There were engineers’ reports that stated that, and a public inquiry was going to be held on it. However, another engineer’s report blew that out of the water and there was no public inquiry. That façade has been retained and now has a completely new building behind it, with shops on the ground floor and flats above. The case gave rise to a whole debate about economic viability, but we were able to prove that things could be done in another way. Land values came into that as well—the owners’ expectation of what the piece of land or building is worth in the marketplace. Sometimes, owners have to reduce their expectation to allow a profit to come out of the end. It can work if you question in the right manner.

Malcolm Fraser: The economic viability test—the SHEP test—is deeply problematic because it assumes that we live in the world before 2008. We have a site in Edinburgh that looks like the surface of the moon, which has one listed building sitting on it and nothing else for some distance around it. The developer can say that the site cannot be developed because of the listed building, and the listed building therefore becomes a whipping boy for the way that the market is. An application is submitted to demolish the building and it can be demolished at any minute as a result of that, but that is clearly not its fault. The one piece of heritage—a substantial, strong-walled reusable thing—gets blamed for the market’s problems and gets demolished.

In St Andrew Square, there is a beautiful modern building from the 1960s—there are such things—that, in 100 years’ time, will be looked back on as an absolute jewel. It is listed, but there is an application in at the moment to demolish most of it and leave just the façade. Then, in three years’ time, an application can be submitted to demolish the façade because a façade has no

integrity and can be demolished simply because the floor plates are not enough.

Listing exists in order to ensure that developers do not do the dumbest thing possible to buildings. The developer with the larger site just needs to think more creatively. I would like to think that, in general, the economic situation that we are in does not mean that we blame the current market conditions on old buildings and do bad things to them. We need joyful reuse. The alternatives at the moment are either a too-prissy reuse or to knock them down. We need to find a way between those.

The Convener: This has been an interesting discussion, although rather discursive and somewhat wide of the mark. Mike MacKenzie has a supplementary question, which I hope is relevant to the Regulatory Reform (Scotland) Bill.

Mike MacKenzie: I assure you, convener, that all my questions are relevant.

The Convener: I also hope that it is very short.

Mike MacKenzie: It is relevant to the duty to promote sustainable economic growth that seems to be dominating discussion of the bill. I am glad to hear you say that that duty is not a problem and that you have been doing that for years anyway. I welcome that part of the bill, and I must question whether you have been doing that for years. If that were truly the case, why do we have so many out-of-town supermarkets—more than any other country except, perhaps, the United States? If sustainable—I emphasise that word—economic growth and development is how you have been operating, how do you account for that?

The Convener: What difference will the bill make by introducing an obligation to promote sustainable economic growth? How does that compare to what has happened in the past? I ask for brief answers, please.

Malcolm Fraser: If we could define sustainability in a reasonable, correct way, taking in the greater good for a whole community, the on-costs for a local authority and Government in general and the potential for growth, money and wealth, that would be a positive thing. It would not allow out-of-town supermarkets to be built. At dinner, I sat next to the head planner of Highland Council and asked him why he had stuck an enormous supermarket outside Fort William, which is going to destroy the remaining parts of the town. He said that the planning lawyers had made a very good argument for it. We need planners to have the equipment and the definition of sustainability to kick such arguments into touch.

Alistair MacDonald: There is now a stronger recognition by Government, in advice that is given to local authorities, that the sustainable approach

is the one that we should be taking. The application for the Braehead shopping centre was called in and refused but went to appeal and was granted by the reporter at the time, despite the fact that various councils in cities and towns were saying that it might have an impact. That application was granted on appeal.

Nancy Jamieson: Such a shopping centre would need a retail impact assessment, and I have never seen a developer submit a retail impact assessment that says that the development will impact on a local shopping centre. It is difficult, because the process is based on the evidence that they provide and our being able to say that, yes, the development will impact on the local shopping centre. In Edinburgh, however, the councillors often do not agree with our opinion on such things.

The Convener: Thank you. Unless there is anything that you desperately want to add, we will call it a day. Thank you for your evidence, which is very helpful to the committee.

12:26

Meeting continued in private until 12:43.

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