



OFFICIAL REPORT
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Local Government and Communities Committee

Wednesday 21 March 2018

Session 5



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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
10th Meeting 2018, Session 5

CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

DEPUTY CONVENER

*Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Kenneth Gibson (Cunninghame North) (SNP)

*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

*Graham Simpson (Central Scotland) (Con)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Norman Macleod (Scottish Government)

John McNairney (Scottish Government)

Kevin Stewart (Minister for Local Government and Housing)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 21 March 2018

[The Convener opened the meeting at 09:17]

Planning (Scotland) Bill: Stage 1

The Convener (Bob Doris): Good morning and welcome to the 10th meeting in 2018 of the Local Government and Communities Committee. I remind everyone present to turn off mobile phones. As meeting papers are provided in digital format, members may use tablets during the meeting. We have a full house today—no apologies have been received.

Under agenda item 1, the committee will take evidence on the Planning (Scotland) Bill at stage 1. I welcome Kevin Stewart, the Minister for Local Government and Housing. With him are John McNairney, chief planner, Andy Kinnaird, bill manager, and Norman Macleod, senior principal legal officer, from the Scottish Government. I invite the minister to make opening remarks.

Kevin Stewart (Minister for Local Government and Housing): Thank you, convener, and good morning. The Planning (Scotland) Bill is just one element, but a vital one, of a full programme of review of the planning system. The bill's content and our intentions for the review as a whole are rooted in the findings and recommendations of an independent panel that was made up of users of the planning system.

There have been a number of drivers for the planning review from the beginning: the need to deliver more housing, the need to improve the experience and influence of our communities, the effectiveness of development planning and leading positive change in our places, the need for more proactive management of development, and the need for strong leadership and better management of skills and resources. We have maintained our focus on all those drivers throughout, and we are taking forward the vast majority of the panel's recommendations.

We are not starting from scratch. Much of the existing planning system will remain—for example, there will be a continuing requirement for development planning to contribute to the principles of sustainable development. However, we are proposing changes that will radically reform how planning is done. The bill is certainly more than just tinkering—it will lead an essential shift in our planning services away from a largely

regulatory function, and it will strip back unnecessary process to facilitate delivery of good-quality development and the great places that our communities deserve. For example, our reforms for development planning will create greater clarity for all about the future direction of development and will free planners and stakeholders from the continuous cycle of plan writing, which will enable them to work together on plan delivery.

The bill pursues a continued drive for better up-front collaboration involving people from the outset in the choices that need to be made about future development. Local place plans will give people a greater opportunity to come together to discuss, consider and express their aspirations, and a chance to have real influence over the future of their places.

I accept that there are mixed views about appeal rights. I have considered the issues and I agree entirely with the independent panel: stronger community engagement at an early stage is much more constructive than adversarial appeals at the end. I want our reforms to remove conflict, mistrust and tactics from the system: better early collaboration by everyone is the way to go.

Scotland needs investment in good development for our communities, and our planning system should, of course, facilitate that. The bill should not bring further complexity, process and uncertainty to people who may want to invest in Scotland. The reforms must lead to improved performance and to a more positive, proactive and confident planning system. Our proposals for increased resources, skills development and performance improvement will bring a supportive approach, which will encourage the whole planning service to function well.

Although the legislation focuses on process, following on from the bill we will also progress work on national planning framework 4, which will incorporate Scottish planning policy. That will involve further collaboration on and scrutiny of important priorities in national planning policy.

I hope that that provides a useful context to inform our discussion today. I am looking forward to discussing the bill with members and to answering your questions.

The Convener: Thank you very much, minister. That is welcome. We move to questions.

Andy Wightman (Lothian) (Green): Thank you for coming this morning, minister. You laid out at the beginning some of what you called the drivers of the bill. Our job as a committee is to scrutinise the bill and to report to Parliament on its general principles. Can you tell us what the general principles are?

Kevin Stewart: As I said in my opening remarks, the Government commissioned an independent root-and-branch review of planning in 2016. The review looked at the planning system as a whole and concluded that it is not broken, but change is needed to make it more efficient and effective.

The panel said that the vision underpinning the Planning (Scotland) Act 2006 remains valid, and that planning should be an enabler of sustainable economic development, rather than a regulator. The panel also sought to strengthen the system and made 48 recommendations for change. Many of those recommendations can be achieved through wider changes—for example, from policy to practice—and we are taking those forward alongside the bill.

The bill has an important role to play in setting the framework for the system as a whole. Building on existing legislation, the bill includes carefully targeted changes, which may appear technical but will play a big role in supporting broader ambitions of planning reform.

Andy Wightman: You mentioned the independent review and its recommendations, but can you succinctly describe for us the bill's general principles? Your opening remarks can stand as your response to that question, if you are content for them to do so.

Kevin Stewart: My opening remarks stand. We want a planning system that works for people. I know from casework, as many members do, that the planning system is a rather confusing place for many folks. Following the review, we undertook to look at all that. Removal of the processes that we have already talked about will to a degree help to give folk a much better understanding of the current situation with planning.

As I have said right from the outset when I came into this role, one of the key things for me is to reach a point at which we can intertwine community and spatial planning. Community planning now involves a huge number of folk in many parts of the country; I want the same for spatial planning, and I think that intertwining the two can help in that regard. The committee has received evidence and written submissions from a number of folk saying that some of the things that are going on at the moment do not entice people into getting involved, but I want their involvement.

There are a number of workstreams beyond the bill, including the establishment of a digital task force. We could use technology much more to get many more people involved. Moreover, in this year of young people, I want many more young people to get involved in the system, because it is important that they have a say in planning for their

future. The fact is that, in the main, the folks who are involved are older and settled.

The Convener: Mr Wightman, I thought that you were going to push a little bit further on the issue.

Andy Wightman: We are only here for two and a quarter hours, convener. I have sought the answer to my question.

The Convener: If you are going to ask the questions that I think you are going to ask, deputy convener, it would be helpful if you came in here and followed some of that up.

Monica Lennon (Central Scotland) (Lab): First, I remind the committee that I am a member of the Royal Town Planning Institute.

I want to develop Andy Wightman's line of questioning. For clarity, what do you think is the core purpose of planning?

Kevin Stewart: As I see it, the core purpose of planning is to create great places. It is about ensuring that we serve Scotland's communities, that we achieve sustainable economic growth and that we have the housing that we need and the jobs that we need for our economy to thrive.

Monica Lennon: The bill does not state the core purpose of planning, and we have heard from a number of witnesses—the RTPI, Professor Cliff Hague and others—that that would be a very sensible addition to the bill. We have also been told that other countries have been able to state very distinctly the purpose of planning. Is that an omission from the bill?

Kevin Stewart: I do not think so. We agree that the United Nations goals are a useful starting point, but we think that they are more relevant to policy than to primary legislation.

There is also a duty for planning authorities to contribute to sustainable development in the exercise of their functions, as introduced by the 2006 act.

09:30

There are many different ideas on the purpose of planning. The week before last, I was at a meeting with folks from the Scottish alliance for people and places. If we had gone round the room and asked, there would have been different ideas about the purpose of planning.

Other countries set all that out in policy, rather than in legislation. Reaching a definition and getting agreement on it is always going to be extremely difficult.

There are also a number of legal aspects to consider. If you do not mind, convener, I will bring

in Mr Macleod at this point. As our legal expert, he might wish to add a few things.

The Convener: Of course.

Norman Macleod (Scottish Government): My observation is that we can set out a purpose of planning in policy terms. If that were to be put in legislation, however, it would have legal effect. If it were to have legal effect, it could be used—and people would want it to be used—to challenge decisions and alter how things are processed at all levels of the planning system. We would therefore need to be very clear that that purpose of planning was what we want it to be. It would be much harder to amend a purpose in legislation than to amend a purpose in a policy document.

Monica Lennon: Is it the case that there is not a clear and agreed definition of planning? Professor Cliff Hague, who is a renowned international academic, said:

“What is the alternative to having a purpose? There are presumably two possibilities. One is that there is no purpose, in which case why are we doing it? The other is that there is a purpose but we are not prepared to say what it is, and that is not a great piece of administration.”—*[Official Report, Local Government and Communities Committee, 7 March 2018; c 49.]*

Is there a legal impediment to linking the purpose of planning to the UN’s sustainable development goals? Would that not be a sensible place to start?

Kevin Stewart: I outlined what I see as being the purpose of planning. I do not think that many folk would disagree with many of the things that I have said.

The question is whether the definition should be in legislation or in policy. Mr Macleod has outlined the issues in his way—what is the purpose, how do we get to that point and what is the situation if that is challengeable?

As Ms Lennon is probably aware, such discussions around the topic arose during scrutiny of the Planning (Wales) Act 2015. An independent advisory group said that there was a need to introduce a statutory purpose, which the Welsh Government resisted during early scrutiny. I believe that it had some difficulties around that.

The Law Commission is currently undertaking a review of planning law in Wales, with a view to providing recommendations for consolidating and simplifying it. Its consideration of the appropriate section of the Planning (Wales) Act 2015 and the proposal on the need for a statutory purpose is set out in a detailed consultation paper that was issued in November last year. The commission suggests that setting out a purpose in law could cause unnecessary and unhelpful duplication as well as conflict.

The last thing that I, and others, want is conflict; a huge part of what we are embarking on is about trying to remove conflict from the system.

The Convener: Okay. We will move on to a new topic.

Graham Simpson (Central Scotland) (Con): The bill has been described as a centralising bill. From going through it, that appears to be the case. Can you point to any part of it in which powers will not flow to you?

Kevin Stewart: I do not think that powers will flow to me at all. As I have said previously, I am not the kind of person who goes for a power grab. The bill is about getting it right for the people of Scotland. That is why we have ensured that it provides the opportunity for local place plans and why we have looked at removing often confusing process from the system. That is in order to involve more people in the planning system at the very early stages. I think that we are on the right track, and I dispute the suggestion that the bill is a centralising bill.

If I may, convener, I will bring in Mr McNairney.

John McNairney (Scottish Government): On looking at the system as a whole, which is what we do, and trying to ensure that it works more effectively, the introduction of local place plans, the alignment of community and spatial planning, the co-production of the national planning framework, the strengthening of local review bodies, which, from their principle, are about returning powers to local government from central Government, and the day-to-day scrutiny of planning cases—ministers take very few planning decision cases now—are examples of the direction of travel away from centralisation.

Graham Simpson: That was a very long way of not answering the question. I asked whether the minister can point to any part of the bill in which powers will not flow to him. You have not answered that question, but I will give you another opportunity to do so before we move on to another area.

Kevin Stewart: Maybe Mr Simpson would like to point out areas in which powers will flow to me.

The Convener: I heard the same answer that Mr Simpson heard. It is not for me to arbitrate in the flow of questioning, but it would be good if you put on the record specific examples of where power will flow to local communities. Mr Simpson could then follow that up if he wants to.

Kevin Stewart: I have outlined the key area in which power will flow to communities: local place plans. Mr McNairney has outlined that, as well. I know that I am being repetitive, but I have said right from the beginning that I want communities to have a say. I want spatial planning to be

intertwined with community planning, which will allow communities to have a greater say in their neighbourhoods and areas. I highlight that area.

The Convener: That is helpful, minister. Does Mr Simpson want to follow up on that?

Graham Simpson: I do not seem to be getting anywhere with that line of questioning, so I will move on to simplified development zones, if that is okay, convener.

The Convener: Yes—go for it.

Graham Simpson: The issue flows on rather nicely. Paragraph 6 of proposed new schedule 5A to the Town and Country Planning (Scotland) Act 1997 states:

“The Scottish Ministers may at any time direct a planning authority”

and set out the terms by which it must make or alter a simplified development zone scheme. That seems to be pretty centralised to me.

I know that you have been asked this question by the Delegated Powers and Law Reform Committee. One of the concerns is that, as the bill stands, it does not specify where simplified development zones cannot be set up. I know that you have committed to correcting that oversight—assuming that it is an oversight—but can you give us more details of your thinking on that?

Kevin Stewart: I wrote to the Delegated Powers and Law Reform Committee, which had questions in that regard.

On your question about the power in relation to simplified development zones, we do not at all envisage using that power frequently. It will be an option to consider when we prepare the delivery programme for the national planning framework and are considering how best to ensure that key sites and projects of national or regional importance are managed and brought forward for development in a co-ordinated way.

Ministers might think that a simplified development zone could support housing delivery, for example. In Ireland, the strategic development zone approach, whereby the Government makes an order that requires the planning authority to prepare an SDZ scheme and bring it forward within two years of the date of the order, has enabled the creation of quality neighbourhoods that address housing shortages.

I reiterate that we do not envisage using the power frequently. I mentioned my letter to the Delegated Powers and Law Reform Committee. We have agreed with that committee’s suggestion that types of land that may not be included in a simplified development zone should be set out in the bill. There should be a power to add or remove

entries in that list, by regulation. I have undertaken to lodge an amendment to that effect at stage 2.

The Convener: That is helpful.

Graham Simpson: That is absolutely right; you undertook to do that, minister. Can you tell us what types of land might be covered in your amendment?

Kevin Stewart: I have given an undertaking to look at all that very closely at stage 2, and I will continue to have discussions about the matter. We will let you know what we plan to do as we come closer to stage 2.

Graham Simpson: If you do not envisage using the power to make a simplified development zone scheme very often, why do you need it?

Kevin Stewart: Issues might arise, as has happened elsewhere, that necessitate ministers becoming involved in simplified development zones.

Some of the debate about the issue has been interesting. Some folk—including Mr Simpson, I think—want ministers to become much more involved in the establishment of new towns, in relation to which powers exist under the New Towns (Scotland) Act 1968. A new town is a huge development, and Mr Simpson and others want ministers to become more involved in such developments. However, he seems not to want us to have the ability to intervene in relation to a simplified development zone in the national interest. That would involve a much smaller development than a new town.

Graham Simpson: Minister, you should not assume that I take a particular view just because I asked you a question about something. We are here to scrutinise the bill—

The Convener: Can we depersonalise this? Will you just ask your question? We have a lot to get through.

Graham Simpson: The minister mentioned me a number of times, so I am just putting him straight. If a committee member asks a question—

The Convener: Hang on. We genuinely have a lot to get through. We want to get through the nuts and bolts of the bill, and I want people who ask questions and people who give evidence to do so in a respectful and straightforward manner. That applies to everyone around this table, including me. Will you ask your question?

Graham Simpson: It has been asked, convener.

Kevin Stewart: Let me make a point of clarification about the power in relation to simplified development zones. It is, in effect, a reserved power for ministers. I expect the vast

bulk of such zones to be led through local development plan commitments.

09:45

The Convener: There are a couple of supplementary questions. The line of questioning is very reasonable and valid. A few members of the committee would like to bring to life how simplified development zones would be used. Would you expect, minister, that the next time each local authority looks at its local development plan, it will have given detailed consideration to the parts of its land that could, should and will be used as simplified development zones, for example? Is that an expectation that you would have of every local authority with the passage and delivery of the bill?

Kevin Stewart: I expect all local authorities to make decisions for themselves about whether they think that simplified development zones are required in their areas. As members are well aware, we currently have pilots on simplified development zones. Those zones offer up opportunities in both urban and rural areas to ensure that the right development takes place in the right place. I know that the committee—

The Convener: Minister, I apologise for cutting across you, but we have a lot to get through. The specific question was about whether there is an expectation that, at the drafting of their next development plans, every local authority will have in them their simplified development zones and why they have selected them or a detailed explanation about why they have not selected them. Is that your understanding of what the bill will deliver?

Kevin Stewart: I expect local authorities, as the makers and deliverers of local development plans, to come up with what they think is right for their particular areas. Some local authorities may not see simplified development zones as being the way forward for them, but other local authorities may choose to move along that way of doing things. As I have said, such zones offer a huge amount of opportunity, and I think that the pilots will prove that to be the case. In the past, we have seen situations with simplified planning zones—Hillington in Glasgow springs to mind—in which we have seen real moves as regards sustainable economic growth because such zones have been in place. However, it is up to local authorities to look at what is best for their areas.

The Convener: I will push at the same question again. A local authority may decide that it is up for a simplified development zone that will be at either place A or place B on the map, in a delineated area. Will ministers have to give approval and say that the authority has got the right place?

Alternatively, as Mr Simpson suggested, can ministers say that they have the power, that the authority has picked the wrong place, and that they will impose it in another place? I am trying to bring to life what would happen. As long as it is for the local authority to decide where the simplified development zone is, is that completely in its democratic gift, without Government interference?

Kevin Stewart: We would not have to approve simplified development zones; that is up to local authorities. We would, of course, have to be notified if there were objections.

Let me be completely and utterly up front. I expect that local authorities would engage with communities in the preparation of any scheme for an area, rather than the community having to react to that. We have built in various opportunities for the public to be involved in the preparation of simplified development zone schemes. We will set out in secondary legislation more details of the community engagement requirement in the preparation of such schemes, which will include early engagement, consultation with key agencies and the opportunity for formal representations. If there are objections, ministers may prescribe certain cases in which a hearing should be held.

I hope that that is helpful, convener.

The Convener: It is helpful, but I am trying to get at the converse. The expectation is that, if local authorities proactively seek simplified development zones, there should be detailed community consultation ahead of confirming that, but other than notification, you do not anticipate ministerial or Government involvement at that stage. That seems to be what you suggest. My question is about the converse: when local authorities do not go for simplified development zones, will the Scottish Government trawl each of those areas to identify whether the authorities have got that right or wrong and whether there is a need for ministerial involvement? Is that what we can expect on enactment of the bill?

Kevin Stewart: As I said in response to Graham Simpson's initial question, I do not envisage using the Scottish ministers' power to designate simplified development zones frequently. It would be used only if it was in the national or regional interest. As far as I am concerned, if it is not in the national or regional interest, it is a matter for local authorities to determine.

John McNairney: The expectation is that authorities will consider the role that a simplified development zone might have, including when they are preparing local development plans. It is not intended that Government would actively police that or that, if an authority decides that there

is no role in its area for a simplified development zone, we would question that or try to cut across it.

Some authorities will want to promote simplified development zones. At present, there is limited appetite for that but, as the pilots develop and people see the benefits, the tool will be there to be used. The process for designating them will be more straightforward than at present. Currently, there is a lot of process around it, although the current and proposed frameworks are about front loading.

The interface of central Government with the matter would be limited. There is potential for the national planning framework to be supported by a simplified development zone in certain cases, but that is still open for consideration.

The Convener: That is helpful. That was the key part of the answer. I wanted to know whether the Government would proactively police local authorities that do not come up with simplified development zones. The answer seems to be that that is not the intent. That is what I was trying to tease out.

Monica Lennon: In instances in which a request is made to a planning authority for a simplified development zone and that request is refused or no answer is given within three months, the applicant or relevant person can refer the matter to the Scottish ministers. Therefore, ministers would have a locus.

Minister, you have talked about using your proactive powers sparingly in the national interest, but if a local authority has turned down a request because it does not conform with the development plan and the matter lands in front of you because someone has an answer that they do not like or did not get an answer within three months, what tests will you or future ministers apply? I know that you are keen to improve the effectiveness of development plans in a plan-led system. Is not there scope for conflict in the system in that respect?

Kevin Stewart: As the planning minister, cases often cross my desk in which folk do not get their own way. Like all my predecessors, I have to wrestle with such matters regularly. As with all other things that cross my desk, I would have to consider every request very carefully indeed.

We will consult on how the procedures will work in practice. In my previous answers, I have talked about the level of consultation that I expect at local level for any move to implement a simplified development zone. That would be part of my consideration if such a case were ever to cross my desk.

Monica Lennon: For clarification, is it correct that, with the introduction of simplified

development zones, the bill is putting in place another appeal mechanism under which cases will be referred to ministers when an SDZ request is not granted or when no decision is taken within three months?

Kevin Stewart: The thing is that, at this moment in time—

Monica Lennon: Is that a yes or a no, minister? Is this another appeal situation?

Kevin Stewart: I suppose that you could consider it that way, yes.

Monica Lennon: So—there will be more appeals.

Kevin Stewart: At the end of the day, we will make sure that we consult on how these procedures work in practice.

The Convener: Graham Simpson has a brief supplementary, after which we will definitely move on. As I keep saying, we have a lot to get through, and we are going to get through it all.

Graham Simpson: If a council were to decide, for whatever reason, to set up an SDZ, according to the bill you would still have the power to alter the scheme. Why would you want to do that? Why can you not leave councils to do what they wish in their areas?

Kevin Stewart: I will bring in Mr McNairney first and then respond myself.

John McNairney: The local authority would prepare the scheme; however, there might be objections and disagreement, so it might have a hearing. As a result, the scheme might then be notified to ministers. Some of the triggers for notification might be similar to those for casework; for example, something with a local authority interest might be significantly contrary to the development plan. There might be other reasons why a scheme would get notified, but ministers would then take a view on whether to call in the proposal or leave the matter with the planning authority. That is really about which level of government should take the decision.

If ministers were to call a decision in, you would expect the matter to go to the directorate for planning and environmental appeals; the minister would then get a recommendation, as he does with major casework. We do not envisage that that will be the norm, but we need to provide in legislation a framework that allows for all eventualities. Even if some of the powers are methods of last resort, they need to be in the bill.

As I meant to say earlier, the measures are intended to be positive and something that the community supports, so they will be front loaded. That said, in the event of any dispute and triggers

being met, we would expect such matters to be notified to central Government.

The Convener: Do you want to add anything, minister?

Kevin Stewart: I think that Mr McNairney covered the matter in some depth, convener.

The Convener: Do you have any further comments, Mr Simpson?

Graham Simpson: I would just point out that the section in question makes no mention of disputes. It is just a blanket power.

The Convener: Might the Government have to think about restricting that provision or establishing criteria with regard to it?

Kevin Stewart: As I said perhaps two answers ago, we will set out and consult on the procedures. Those things will be open to scrutiny, as they always are.

The Convener: I see that Mr Wightman is trying to catch my eye, but I will take his line of questioning later. We will move on to an area that Jenny Gilruth and Alexander Stewart are interested in.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): I want to look at the provisions on local place plans. Under the bill, planning authorities are to “have regard to” the local place plan, which means that a community could create such a plan but its needs could then be completely ignored. That possibility was highlighted in a previous evidence session when Dr Andy Inch said that

“A risk of a weak status for local place plans in decision making is that communities and others can invest hundreds of hours and huge amounts of voluntary time and effort into producing the local place plans, only to find that subsequent decisions broadly disregard”—[*Official Report, Local Government and Communities Committee*, 28 February 2018; c 5.]

them. Do we need to revisit the wording of the bill and consider again putting local place plans on a statutory footing, so that communities are listened to in the planning process?

10:00

Kevin Stewart: We want planning authorities to consider seriously the plans that local communities have put forward for their places, but they will not be bound to adopt them in full.

Planning has to deal with the connections of places at all scales. There has to be consideration right across the board and, of course, account has to be taken of the national planning framework. Planning authorities have to consider the whole area that they represent and how they meet their statutory duties on issues such as equalities and

climate change, which local plans might not—repeat, might not—cover.

I have listened very carefully to the arguments on the wording, which at the moment is “have regard to”. I think that we should require planning authorities to “take account” of local place plans in preparing their local development plans. That would place local place plans on the same level as the national planning framework and local outcome improvement plans, for which the phraseology “take account” is used.

Jenny Gilruth: I see a lot of fellow members disagreeing with that, so I want to follow up on it. I assume that the wording “take account” does not put a statutory obligation on planning authorities to actually listen to the local plans.

The Convener: I think that there were bemused looks rather than looks of disagreement from committee members. Minister, if you could enlighten us, that would be helpful.

Kevin Stewart: I want to ensure that communities have their say in planning, but other factors come into play. There are factors that the local development plan needs to take account of. There are policy-related requirements with respect to local development plans and requirements to deliver for an area as a whole and not necessarily just one community. At some point, a local authority also has to be able to take into account either necessary policy objectives or national planning framework objectives.

As members are well aware, the local development plan has to go through substantial scrutiny before being adopted, including a strategic environmental assessment, independent examination and public consultation. If local place plans were to be automatically adopted, they would need similar scrutiny. We want to reduce bureaucracy, as folk are well aware, but we also want to make it easy for communities to put forward their proposals and their ambitions for their places.

Our approach, therefore, allows the scrutiny to be undertaken when a planning authority prepares or reviews its local development plan, taking account of local place plans for the area, rather than placing the burden on the community.

I have said elsewhere, when talking about the early stages of community planning, that in the first scheme that I was involved with, members of the community placed stickers on a map of the area to show what they wanted to see. In that particular exercise, we ended up with folk wanting three swimming pools within four streets, because no parameters were set and there was no communication about it.

However, when people know that certain things have to take place in a particular area they exercise good judgment. If we achieve that level of communication, people will formulate place plans that take account of what is necessary for the particular place, again removing unnecessary conflict. That is the position that I would like us to reach.

Jenny Gilruth: Many of the organisations that we have taken evidence from have highlighted capacity issues around developing local place plans and have suggested that there should be a cost associated with the plans, with financial support from the Government. My concern is that poorer communities are going to be disadvantaged in relation to local place plans. If there is no active community council, for example, there is no obvious body to develop the plan, and there may not be the capacity to do that because, in the past, the community may never have had the opportunity to feed into the planning process. What are your comments on those issues?

Kevin Stewart: I will start with some of the costs that have been suggested by folk who have given evidence to this committee and other committees of the Parliament, one of which is the figure of £13,000 for each local place plan. That £13,000 would be the total cost if a community had to pay for everything in a charette-type circumstance. However, that is not necessary, as I said when I appeared in front of the Finance and Constitution Committee a few weeks ago.

A number of places around the country have already formulated place plans with no resource input from anywhere else. In some cases, I have heard it said that folk did not want the resource input, because they thought that that might mean there would be interference from elsewhere. I have talked in the chamber about Linlithgow and its local place plan, which it developed on its own, and the convener of the Finance and Constitution Committee talked about areas in his Stirling constituency where folk have developed their own local place plans.

The financial memorandum for the bill, which I went over in some depth with the Finance and Constitution Committee, estimates that

“five or six in a medium-sized authority, over a three-year period, might be reasonable, making a total of around 92 LPPs being prepared each year.”

I do not want local place plans to be too onerous or necessarily to require a significant amount of planning expertise. We already have tools and templates that help communities to understand and formulate what they think is required in their place. I have talked before at this committee about the use of the place standard tool, which is one of the ways forward.

At the Finance and Constitution Committee, I said that I expect local authorities to prioritise and use resource to support more deprived communities that want to formulate local place plans and to give those communities the help that they need. I hope that the engagement in formulating local development plans will be completely and utterly inclusive, to ensure that communities that are more disadvantaged get help and support.

Finally, also at the Finance and Constitution Committee, I pointed out that there are Government funds available for such work. The £20 million empowering communities fund invests in communities so that they can develop the resource and resilience necessary to decide their own priorities and needs. I imagine that there will be applications to that fund. Over the past few years, the Government has invested to allow communities to hold their own charrettes. There are various opportunities.

I share Ms Gilruth’s desire to ensure that poorer communities are not disadvantaged, and I expect local authorities to prioritise help for such communities in the first instance.

Jenny Gilruth: My final comment is a point rather than a question. Recently, the committee has taken a lot of evidence on the city region deals. We have produced a report and will hold a debate in Parliament next week. The committee has heard evidence on the disconnect between the city region deal aspiration, which is meant to drive inclusive growth, and the planning process.

It was interesting that you alluded to the actions of local authorities and said that you hoped that they would listen to the aspirations of communities. In my experience, Fife Council did not listen to the aspirations of some of the poorest communities in Scotland in the area that I represent. Given that it was just hoped that Fife Council would carry out community engagement and the council was not required to show evidence of how it had done so, the council did not do it.

I am concerned that, if local authorities are not compelled to do something, they will not do it. They will go ahead with their own pet projects, as I found in my experience of the city deals, whereby the city of Edinburgh benefited hugely from the city deal funding and Fife did not.

Kevin Stewart: I have read the committee’s city region deal report, but that was several weeks ago. I cannot remember the detail of your recommendations off the top of my head.

The city region deals fall within Mr Brown’s domain. I do not want to put words into his mouth or anyone else’s, but there has been some frustration at points about the negotiation around the deals and the quickness with which some

things have been done without consultation. Where there is an opportunity for consultation, I always want it to happen.

Mr Brown and others will look carefully at the committee's report on its scrutiny of city region deals and its recommendations, and I will convey Ms Gilruth's remarks on that to Mr Brown—although he has probably already heard them.

The Convener: I can confirm that he almost certainly has, minister.

Jenny Gilruth: Yes.

The Convener: I hope that he will take account of them.

Alexander Stewart has a question, but I ask him to be patient, because his colleague Graham Simpson has a specific supplementary question. I ask members to hold back their supplementary questions until after Mr Stewart has exhausted his line of questioning.

Graham Simpson: I am happy to let Alexander Stewart ask his questions as long as I can come back in.

The Convener: You have a very specific question, Mr Simpson, so it would be better to raise it now, while the matter is still fresh.

Graham Simpson: You mentioned Linlithgow, minister. Several members of the committee visited Linlithgow and spoke to the people who had been involved in preparing the local place plan. I have to say that they were less than impressed with the process. They put an awful lot of work into it and produced a very impressive document, but West Lothian Council decided not to adopt it. I think that was the point that Jenny Gilruth was making in her line of questioning.

If councils only have to “have regard to” or “take account of”—whatever form of words you want to use—the plans, that same outcome may come about. Do you not think that the bill needs to be a bit tougher in order to make councils do something with the plans?

10:15

Kevin Stewart: As I said, the wording “take account” would create equality with other aspects of planning. I will bring in Mr Macleod on the use of the terminology and then answer the specific points that Mr Simpson has raised.

Norman Macleod: I will not spend time discussing the distinction between “take account of” and “have regard to”. The important thing is that, if the amendment is made, the words “to take account of” in the bill—the legislative requirement—will be the same for local place plans as for the national planning framework and

for local outcome improvement plans. Those plans will be treated in the same way in the legislation. I am not sure that we would want to put one higher than the other, so the legislative requirement on local authorities to take account of various matters would be the same as for local development plans and the national planning framework.

Kevin Stewart: I will now address the specific points that Mr Simpson made. I have not had the opportunity to go to Linlithgow or to speak to the good folk who put together that plan. As folk are aware, I was sent an overview of the document, and I was very impressed with what the community there has achieved. Of course, that was done under the current arrangements. The provision in the bill will mean that communities such as the one in Linlithgow will have a clearer role in the process and planning authorities will be better equipped to take account of the engagement that exists.

I want to see good practice taking hold across authorities and I want to see local authorities taking account of what folks have to say at a community planning level, as in other spheres of business. Terminology in legislation can often be difficult, but, as Mr Macleod pointed out, the terminology “take account” is in the legislation relating to the national planning framework and the local outcome improvement plans.

The Convener: I think that we will leave it at that point, Mr Simpson. Thank you for putting the concerns from Linlithgow on the record. This committee has to mirror the evidence and concerns that we hear in communities, and we have done a lot of outreach work. There are potentially a few supplementary questions, but Alexander Stewart wants to explore a line of inquiry first.

Alexander Stewart (Mid Scotland and Fife) (Con): Minister, you touched on the need to improve people's experience and ensure that communities have their say. You suggested that local place plans may be a vehicle by which to achieve that. Why have you chosen to go down the local place plan route when, in some cases, the same could have been achieved by improving engagement at the stage of drafting the local development plan?

Kevin Stewart: I want folk to be involved in planning much more than they are currently. It frustrates me that a huge amount of the engagement that takes place is at the end of a process, and it is normally an objection to something that is coming forward.

I want folk to play a part in shaping their communities at an early point. In particular, I want young folk to play a role in shaping their futures, because they are the folk who are least involved in

the planning system but will be most affected by the decisions that we take in the here and now.

We are not introducing local place plans alone, and I want to see further engagement during the drafting of local development plans, too. As part of the wider planning review, we will bring forward proposals to ensure that planning authorities consult more widely on their development plans, including with children and young people.

I have been mightily impressed by a pilot scheme that has been taking place at Galashiels academy. The Government put some resource in to allow the planning advisory service to carry out a pilot there using the place standard, which I have mentioned. To begin with, they were using the place standard in paper form, but an app has been developed that means there is even more excitement about the project.

It is fair to say that the young folk of Galashiels envisage their place differently from the folks who have, until now, been engaged in the planning process, because they see things differently. Participation is one of the six key themes in the year of young people, but I want that engagement to go beyond this year—I want it to become permanent.

Beyond that pilot scheme in Galashiels, I have a digital task force looking at planning as a whole and at how we can use new technologies to simplify the current system and get more folk engaged. It is key that we get many more people engaged in planning.

However, this is not just about local place plans; it is also about improving communication and getting more engagement in local development plans. It is not one or the other—it is all.

Alexander Stewart: Having the engagement of young people, and having the aspiration and ambition to achieve that engagement, is all good and well—we all probably want to see that—but the big issue is how we ensure that it takes place. In communities in which there is engagement and a structure for it, that could be achieved and expanded. However, ensuring that communities that do not have that structure are not disadvantaged in the whole process is most important. Are we ending up with a two-tier system in which communities that have that process can and do engage while other communities do not?

Kevin Stewart: I agree completely and utterly with Mr Stewart on those points about engagement. I want to see communities that might struggle to become engaged prioritised in terms of resource. I want to ensure that, when it comes to the formulation of development plans, planning authorities widen their communication. I also, without doubt, want to see more young folk involved in the system.

Planning has been described to me by some folk as rather dry, so I want to make it a bit exciting. With technology, I think we can do that. That is why the review is not just about this bill. We are on a journey—in terms of the results of the independent review, the planning bill, NPF and Scottish planning policy—that we need to continue in order that we get more folk involved. Convener, if you will excuse this expression, rather than planning being seen as dry, I want it to be seen as a wee bit sexy and as something that folk want to get involved in.

The Convener: This might be a good time to interject. I am conscious of the lengthy reply that you have given, for which we are grateful, but we have scheduled 2 hours and 45 minutes to spend with you and your officials, which is a huge amount of time. It must be exciting—

Kevin Stewart: I hope that you are giving me a half-time break, convener.

The Convener: We can take a brief break at 11 am, if that would be welcome.

Kevin Stewart: I would be grateful for that.

The Convener: That would be for 5 minutes. I appeal to MSPs and to you, minister, for focus and brevity in questions and answers so that we get the comfort break and have the meeting done and dusted by 12 pm. That is an appeal to everyone.

Alexander Stewart: The minister has identified what we all want to achieve. The bill will enable that to happen if it is resourced, if councils are resourced and if communities are resourced. If they are not resourced, it will fail. How are we going to bridge that gap?

Kevin Stewart: The financial memorandum shows that freeing up folk from doing a huge amount of the bureaucratic stuff saves a fair amount of money. Off the top of my head, I do not know what the number is, but it will come to me. I expect local authorities to use that freed-up resource to deal with the changes that we are making by investing in helping communities to have their say, whether through local place plans or greater engagement. There is a huge opportunity to do that.

I recognise that this committee and other committees have heard a fair amount about resourcing. Over the past few weeks, some local authorities have put additional resource for planning in their budgets, and I am pleased about that. Craig McLaren of RTPI said that, at the moment, 0.44 per cent of local authority budgets go to planning, and RTPI expects that to drop to 0.4 per cent. I hope that the change that we are seeing will mean that planning resources increase.

As I have said previously with respect to resourcing, I would like planning to become cost

neutral at some point, so that the fees that come in cover the costs of the service completely. I have also said that I am not willing to increase planning fees again until we see better performance, and in a number of authorities we are beginning to see that better performance.

I do not want to dictate to local authorities how they should spend their money, but you can be assured that I will keep a very close eye on resourcing and performance over the piece, with a view to getting to a point in the future when the service pays for itself.

10:30

The Convener: I will follow up on that, and I note that Jenny Gilruth and Monica Lennon want to ask supplementaries on resource issues, too.

Resources will be an issue. An additional area of complexity with local place plans is that they must dovetail with local development plans. If the local place plan goes off in one direction and the local development plan goes in another, how can they mesh together? How can one be adopted by the other? There must be much closer articulation between a local place plan and a local development plan. I am not sure how that can happen when account must be taken of the national planning framework, too. A degree of meaningful expertise is required to develop local place plans that will have added weight and value in influencing local development plans. That costs money. If an area does not have an active community development trust or is not particularly affluent, there might not be the skill set or the resource available to do that. It would be helpful to have your reflections on how local authorities and Government might target resources.

Kevin Stewart: I do not have the financial memorandum in front of me, and I cannot remember some of the numbers off the top of my head, so I will write to you.

As you are well aware, I have given evidence to the Finance and Constitution Committee on resources. If you do not quote me, I can—

The Convener: Minister, for your own safety, I warn you that this is a live session.

Kevin Stewart: I will not be specific. A number of millions of pounds will come into play with the changes to the local development plan system, which will free up resource. I would expect local authorities to look at using that additional resource at their disposal to invest in local place planning and to ensure that the communication of local development planning is right. I do not want to dictate to local authorities, but they will have a huge opportunity to make sure that the freed-up

resource goes into ensuring that they get that area of planning absolutely right.

In addition, if the bill is agreed to and becomes an act, we will consult again on the fees structure, including on enhanced fees and discretionary charging, to ensure that it reflects the developments in planning. We will undertake a full impact assessment on the implications of the changes for system users.

I apologise for not bringing the financial memorandum with me, convener.

The Convener: You have answered a really good question, but it was not the one that I asked. I am trying to make the point—which I hope you appreciate—that there could be a need for resources to be targeted intensively at certain parts of local authority areas across the country. Your reply was about what local authorities could do to target some of the money that they might make from efficiencies in their area, but you also mentioned existing national funds that could, in theory, be used.

My contention is that, separate from existing national funds and what local authorities might do, it might be beneficial to establish a pilot fund to target some of our deprived communities across Scotland. I am decoupling that pilot fund from the moneys that are set out in the financial memorandum as being required to make the bill work. A stand-alone fund for such community capacity building would be very welcome as a way to bring to life the bill as and when it is passed. I know that you do not hold the purse strings, but would you give consideration to that?

Kevin Stewart: I would consider targeting the funds that the planning and architecture division has in certain areas to see what the benefits of that would be. I am certainly not promising any additional funding—you would not expect me to—because that would be to go against what is in the financial memorandum, and Mr Mackay would be extremely unhappy with me if I were to promise additional moneys that I do not have at my disposal.

However, I will consider targeting the funds that we currently have to ensure that there is community capacity and resilience in certain places. I reiterate that I expect local authorities to use the freed-up resource to get the process absolutely right in their areas. As I said in my response to Ms Gilruth, I expect more disadvantaged communities to be seen as the priority.

The Convener: Okay. You can let us have more information on that.

I want to mop up a couple of things. Alexander Stewart was talking about local development

plans, as well as local place plans. We have talked about the need for early community engagement to be a recurring exercise rather than just a one-off occurrence, regardless of whether there is a local place plan. However, there is no duty in the bill to ensure that there will be stakeholder and community engagement in the development of the evidence report for the local development plans, or during the gate-check exercise. Is that a missed opportunity for community engagement that the Government might want to reconsider?

Kevin Stewart: Our intention is that communities should be closely engaged in the preparation of the evidence report and that the gate check should examine how engagement has taken place and identify areas of agreement or dispute with different stakeholders. There are powers for ministers to prescribe matters to be included in the evidence report and the procedures and matters to be assessed in the gate check. That is in proposed new section 16A of the Town and Country Planning (Scotland) Act 1997, which is inserted by section 3(4) of the bill.

We intend to include the duties for stakeholder and community engagement through the secondary legislation, but I understand the concern of the committee that our intentions for greater community engagement in development planning are not visible on the face of the bill. There are a number of ways in which that aspect might be strengthened, and I will consider what amendments we might lodge at stage 2.

The Convener: That would be very welcome. Other members have supplementary questions on the issue.

Jenny Gilruth: Minister, you spoke about planning becoming exciting—I will not use the other word that you used—but in the annex to your letter to the committee you said that

“it is not always the case that community groups represent the views of their community as a whole.”

Going back to my previous line of questioning on local place plans, community councils are often made up of people of a certain demographic, and perhaps a certain gender as well. Therefore, there might be a disconnect between them and the people whom they are representing.

You spoke about Galashiels academy, and my colleague Andy Wightman and I met pupils from there on Friday. They are a fantastic group of young people who are completely engaged in the process in their area. When we started going through the specifics of the bill with them, they looked at us with blank faces—as we might expect from members of the public. However, when we asked them what their school was like and what a new school might look like to them, they came alive and started talking about it. There is an

opportunity to get the voices of young people heard on the bill.

When we talked to the pupils about whether communities were listened to under the current legislation, they thought that there should be some sort of statutory requirement for young people and the wider community to be spoken to. Should this year of young people not be an opportunity for the Government to signal its intent with regard to how important young people's voices are by mandating councils to listen to the views of young people as part of any planning process? For example, when councils are designing schools, they should have to listen to the people who populate our schools—the pupils and young people.

Kevin Stewart: I am glad that Ms Gilruth and Mr Wightman were excited by the opportunity to meet the folk from Galashiels and hear their views, because those are somewhat different from the views that many of us regularly hear.

I want everyone to become involved in the planning system, but I do not know whether mandating the involvement of particular groups is the right way forward, because we would then have to go through the entire gamut, which might well add to bureaucracy. The regulations for local development plans will certainly set out engagement requirements, and I want to be pretty strong on those requirements.

I will reflect on what Ms Gilruth said about mandation, but we have to be careful about that. However, she can be very sure that I want young people to be involved in the planning system. Beyond that, I want many more people who are currently disengaged from the system to become involved. If we achieve that, we will have much less conflict in the system.

Jenny Gilruth: My point is that, if we get that generational change, people will be far less likely to think that planning is something that is done to them as opposed to being something that they are part of. It is more of a bottom-up approach that I am talking about. That is certainly the view that we got from Galashiels academy, and it would be great if other schools and other young people felt that they had the capacity to engage in the system, or if the system could adapt to engage with a wider audience of people as opposed to a select few who sit on community councils, for example.

Kevin Stewart: That wider audience can be addressed not just through schools or other formal processes. To get complete and utter buy-in from folk, we need to change the way that we do things. Technology gives us the ability to do that. It is quite something to be able to see a three-dimensional visualisation of a place from an iPad as you walk around a blank space seeing what is

proposed in an area. If we can do such things on not just a building scale but a place scale, that will ensure that we bring new folk into involvement in the planning system. That really excites me, and I will certainly do all that I can—not just because it is the year of young people—to ensure that young people are involved in the system, because that is vital.

The Convener: I am trying really hard not to cut you off, minister.

Kevin Stewart: I know. I am sorry.

The Convener: I have been a laid-back convener and have let you expand on your answers, but as we move to the last hour or hour and a half of the session, you will find that I will have to start to cut you off.

Monica Lennon: Has the Government considered giving young people statutory rights? That could mean allowing a school community to produce a local place plan or, for example, that a member of the Scottish Youth Parliament could have formal rights to be a consultee in pre-application consultation in the way that community councils have. That would be a way to embed rights for young people as key stakeholders. Rather than just reminding people that they have the opportunity to take part and encouraging local authorities, ministers and others to take young people into account, cannot we just embed rights in the bill?

Kevin Stewart: In some regards, the move that we are making on local place plans should ensure that many more folk are involved in the formulation of such plans and planning as a whole. I have absolutely no problem with schools, young folk or anyone else becoming involved in planning. I probably got overexcited in answering Ms Gilruth but, as I just said, I want that to happen. However, it is not necessary to put that in the bill.

Monica Lennon: I was not asking about involvement. I was asking about rights to be consulted and to propose a local place plan. Are you willing to consider such rights at this stage?

Kevin Stewart: I would expect local authorities to involve as many people as possible in community engagement—as they do with any other consultation. Local place plans will work best when the entire community becomes involved. That is what I want to happen. However, prescribing the inclusion of different groups in the bill is not something that I would agree with.

10:45

The Convener: We will move on to another line of questioning before we take a break.

Andy Wightman: I want to explore the relationship between the national planning framework and strategic development plans, but before I do that, I have a brief question about simplified development zones. Paragraph 7 of proposed new schedule 5A says that

“A request is valid ... if the requirements prescribed in regulations ... have been met”.

The regulations make no reference to the kind of person who could make a request for a simplified development zone. As it stands, it appears that such a request could arise from anybody. My sister lives in Switzerland. Could she make a valid request for a simplified development zone?

The Convener: Mr Wightman’s sister will soon be on the Christmas card list—she has made a few appearances at committee.

Kevin Stewart: I do not know whether I will be on her Christmas card list or she will be on mine. I will bring in Mr McNairney.

John McNairney: There is no restriction on that because proposals might come from a private landowner, for example. Mr Wightman is correct to say that the bill makes no such restrictions and we would need to rely on regulations to define in more detail the requirement for specific connections with the locality or any other restrictions.

Andy Wightman: That is my question. Paragraph 7(3) of proposed new schedule 5A says that regulations

“may, in particular, include requirements as to—

(a) how a request must be made, and

(b) steps that must be taken before a request may be made.”

Can I take it that the wording

“may, in particular, include”

does not preclude including something in regulations about who can make a request?

John McNairney: Yes, I would say so. Our lawyer, Norman Macleod, might like to take that question.

Norman Macleod: I am not sure that the possibility of individuals based in Switzerland making requests was considered when we drafted the bill. The basic thrust is that no limitation is set out in the bill and the ultimate filter is the quality of the plan that is proposed; a request is made for a plan, which would go through the local planning authority and the authority would consider the merits of the proposal, rather than the identity of the person who has made it.

Andy Wightman: Thank you. That is helpful.

The Convener: Given the time constraints, it would be helpful, minister, if you could write to the

committee to provide greater clarity on the intention of the bill and any subsequent regulations in relation to who could propose—or be precluded from proposing—a simplified development zone. We are moving on to a new area and I do not want to open up that entire line of questioning again.

Kevin Stewart: We will write to the committee on it. I do not know whether Mr Wightman would like a copy to be sent to his sister.

Andy Wightman: I am simply concerned that the regulations do not appear to include provision for such requests and that the system could get clogged up.

The Convener: I do not intend to diminish your point, Mr Wightman. I am just conscious of time constraints.

Andy Wightman: Absolutely, convener. I, too, am conscious of time.

The bill makes important, significant changes to the national planning framework, how it is handled and how it is regarded. For example, it will be combined with Scottish planning policy and is to become part of the development plan.

I want to reflect on earlier comments about the idea that local authorities should take account of local place plans, which would put them on the same footing as the national planning framework, of which authorities must take account. Although that is literally correct, it forgets that the bill proposes that the national planning framework should become part of the development plan, so it would have a massively enhanced status compared to anything else.

Historically, the national planning framework is a light-touch spatial expression of ministers' policies. Why did you feel that it was necessary to make it part of the development plan?

Kevin Stewart: The independent panel made the case for that. Many stakeholders have called for an enhanced role for the national planning framework. Incorporating the Scottish planning policy into the national planning framework is a big opportunity to streamline local development plans across Scotland—

Andy Wightman: I am not particularly concerned about merging planning policy and the national planning framework; I am asking why the NPF needs to be part of the development plan.

Kevin Stewart: One of the reasons is that there will be no need to repeat policies in 32 different local development plans, unless of course there is a need to tailor them to local circumstances.

We also intend to use the NPF to provide greater clarity in requirements for housing land, to reduce some of the conflict in the system.

Development plan status will help in that regard. Instead of working as they do in the current situation, local development plans will be able to focus on achieving outcomes in places where future development should actually happen. We believe that, by reducing duplication, that could significantly reduce the amount of time that people in organisations have to spend contributing to development plans.

Andy Wightman: That is a significant difference from the situation that we have at the moment under the 2006 act, which requires the planning authorities to have regard to or take account of—I cannot remember which—the national planning framework.

John McNairney: At the moment, the development plan is a combination of the strategic development plan and the local development plan. The bill proposes that we no longer prepare the strategic development plan. A key reason why the national planning framework should become part of the development plan is to take account of the strategic element that currently exists, albeit only around the four largest cities, so that we have a conjoined development plan. It is different, but it allows there to be a strategic overview part of the development plan across the whole country.

Andy Wightman: That is helpful.

On the assumption that the strategic development plan will become part of the local development plan, can I ask a few questions about how the national planning framework is agreed? At the moment, ministers publish the framework, it is laid before Parliament and this committee and other committees have a look at it. If I remember correctly, the minister was a convener of the committee that scrutinised the last one in 2014. That went to a debate in Parliament in March 2014 and Parliament passed a motion stating that the reports of the committees were Parliament's response to the Government on its proposed national planning framework. Parliament does not approve the national planning framework, and yet it will become part of the development plan for all 34 planning authorities in Scotland. Is there a case for improving the scrutiny, sign-off and approval of the national planning framework in Parliament to enhance its democratic standing?

Kevin Stewart: As Mr Wightman points out, Parliament was fully involved in developing the third national planning framework. The lead committee took evidence from the minister at an early stage, and during the scrutiny four committees heard evidence and produced reports on NPF3. We are at an early stage in designing the process for national planning framework 4, but we are taking into account recommendations made by Parliament when it considered NPF3. For example, the report on NPF3 asked that we build

into the process early debate by Parliament on the national developments. That would be extremely helpful.

As other witnesses said to the committee, there is a good track record of taking into account Parliament's views in finalising the national planning framework. You can be reassured, convener, that I will further consider the Delegated Powers and Law Reform Committee's recommendations on amendments to the provisions on the national planning framework.

Andy Wightman: I fully accept that previous Governments have taken account of Parliament's views. That is perfectly proper. The difference is that the national planning framework will be part of the statutory development plan. That places it on a very different footing from that which it had before. You can correct me if I am wrong on this, but that provides for the possibility that a future minority Government could put things into the national planning framework to express preferences that are against the wishes of committees in the Parliament and are opposed by Parliament but would become part of the statutory development plan for planning authorities because Parliament cannot say no to the national planning framework.

Kevin Stewart: I understand where Mr Wightman is coming from on that. As I said, I have the Delegated Powers and Law Reform Committee report and will consider further the recommendations on amendments to provisions on the national planning framework.

The Convener: Mr Simpson has a specific point on that, for obvious reasons.

Graham Simpson: Minister, I am encouraged to hear what you said. Will you go a bit further? One of the recommendations of the Delegated Powers and Law Reform Committee was that the Government should

"amend the Bill so that significant amendments to the NPF resulting in a change to the overall policy become subject to specific public and parliamentary consultation requirements set out on the face of the Bill."

Are you saying that you are willing to do that?

Kevin Stewart: I said that I note the recommendations of the Delegated Powers and Law Reform Committee on the issue and will consider them further. We are significantly enhancing Parliament's ability to scrutinise a national planning framework. I have not had the recommendations from the Delegated Powers and Law Reform Committee for long and I will consider them further at stage 2.

Andy Wightman: The Delegated Powers and Law Reform Committee's recommendations on consultation are not what I was asking about. I was asking about whether the national planning

framework should be approved by Parliament—which would put it on a more democratically accountable footing—given the fact that it is to be part of the statutory development plan.

As Mr McNairney noted, the bill gets rid of strategic development plans. It is fair to say that your policy memorandum reflects the fact that there have been mixed views on those plans. The committee has to think carefully about what recommendations it is going to make to Parliament on the question. We have had witnesses, such as those from Clydeplan, who have successfully produced regional plans and are keen that they be maintained. In principle, there is no reason why they could not continue under voluntary arrangements, but there is a worry that, if strategic planning—which is a long-standing feature of the planning system—is to be moved on to a voluntary footing, there will be less incentive for planning authorities to engage in it because of resources and other reasons.

In that context, it is notable that research that Kevin Murray Associates did for the Scottish Government in 2014 said:

"This report has addressed the core question of whether the strategic development planning system in Scotland is fit for purpose. The answer is that the system is still bedding in; it is not 'broken', nor is its potential yet fully optimised."

Will you reflect on the evidence that we have heard about the value of strategic regional planning, the high regard in which it is held outside Scotland and whether voluntary arrangements will deliver the same quality of strategic planning as we have had to date?

11:00

Kevin Stewart: I will start off by commenting on the report by Kevin Murray Associates and then I will bring in Mr McNairney. Although the report did not recommend the removal of strategic development plans, its conclusions and recommendations raised similar points to the issues that we are seeking to provide, which include stronger collaborative leadership; greater alignment of vision, strategy and delivery mechanisms; improved community engagement and awareness raising; a more streamlined process for housing needs and demand assessments; better coverage of infrastructure; stronger links with wider community planning; improved action planning; and a focus on delivering outcomes. Together with the wider planning reform, the bill will ensure that many of those recommendations can be implemented.

Before I bring in Mr McNairney, I will speak from a purely practical point of view, as a constituency MSP. One of the things that frustrates many folk who are involved in the planning process or who

have tried to become involved in the process is the shift from the local development plan to the strategic development plan—they do not understand how all that is put together, which leads to confusion. They cannot understand why they have been consulted on one plan and then are being consulted on another. In order to simplify the process and get rid of confusion, the bill proposes the right way forward.

I will bring in Mr McNairney to make a comment and I would be grateful, convener, if you will allow me to make a few reflections after that.

John McNairney: We strongly support strategic planning. The national planning framework is a form of strategic plan, albeit a national one. The changes reflect both the findings of the independent panel and, as Mr Wightman has suggested, the different views around the country on the issue.

Currently, the strategic development plans focus on four areas, but there are other parts of Scotland that have cross-boundary issues. The partnership working in different regions of Scotland might change over time. At present, Highland Council, the North and South Ayrshire Councils, Dumfries and Galloway Council, and Falkirk Council are not part of the SDP network. We have sought to provide stronger regional focus. There is already a regional perspective in national planning framework 3, which moves us on considerably from earlier versions. The proposals are simply to strengthen that. We co-produce the national planning framework with planning authorities working over different geographies, to ensure that it can give regional perspectives and more information about regional infrastructure such as housing and so on, in a way that reduces duplication and complexity in the system.

There is a feeling, which I share, that, for a country of Scotland's size, we are approaching a position in which we have too many plans: we have the national planning framework, SDPs, LDPs and community planning integrating with those, and now we have local place plans. That comes with some baggage if consultation is going to happen in a way that is really inclusive and effective. The focus is drifting towards simply making plans.

What you see here, and what is at the root of your question, is a rationalisation. We think that things can work more effectively with a stronger national planning framework. It should not necessarily be imposed, because it must be co-produced and have a strong element of what different authorities, working together, want to influence.

The Convener: I will take a final supplementary question in a moment. Minister, would you like to comment first?

Kevin Stewart: No, that is fine. Mr McNairney has covered everything.

Andy Wightman: That was very helpful—thank you.

I suppose that, by getting rid of strategic planning as a statutory requirement, the concern is that we would hollow out the process. We will be producing local place plans, but they will not have much statutory effect, and we will have a national planning framework, which does not get much democratic scrutiny but is part of the development plan. We have to grapple with those issues, but I understand the rationale that Mr McNairney has laid out.

Kevin Stewart: The other point to make is that we are in changing circumstances. As Mr McNairney rightly pointed out, we have strategic development plans that cover the four city regions. Many areas do not have anything like that in place, and this is the opportunity for more co-operation at a strategic level between authorities. Ayrshire is a probably a good example to cite. We are hopeful that it will soon get the growth deal right, and that will require strategic development co-operation across Ayrshire. Given what we have seen as things have developed, we know that different things are at play from what we had when strategic development plans were introduced. The city region deals are a prime example in that regard, as Ms Gilruth pointed out earlier.

There are opportunities for an increased level of co-operation in strategic planning without our being prescriptive or making things overly cumbersome for folks who are often confused about the amount of planning that is going on.

The Convener: Before we all get that comfort break, I will ask one more question. The contention was made that the national planning framework does not get democratic scrutiny. My view is that it gets a massive amount of democratic scrutiny. The issue is whether there should be a final vote in the Scottish Parliament. What are the benefits of putting the framework to a vote? Are there any downsides to doing that? On the downsides—I say this with full self-awareness—there is horse-trading on the budget process and deals to be done on whether to sign up to an agreed budget. Might the national planning framework be privy to that, too, were it to go to a vote in the Scottish Parliament? What are the benefits and the drawbacks of that approach?

Kevin Stewart: My personal experience is that the scrutiny of national planning framework 3 was particularly good. As I have said, a number of parliamentary committees were involved in that.

Having that level of scrutiny is grand, and I would expect that level of scrutiny to continue. As it stands, and as it is proposed, the Parliament will have a huge amount of oversight of national planning framework 4.

The Convener: I thought that would I not have any success in drawing that out of you, minister. We will have a five-minute comfort break. After that, we will wrap up the session after an hour, so we will have to frame our questions appropriately.

11:08

Meeting suspended.

11:14

On resuming—

The Convener: Welcome back, everyone. We continue our consideration of the Planning (Scotland) Bill. Although the bill contains provisions to impose and implement an infrastructure levy, there is no detail on the levy. From the Government's point of view, the jury is still out on whether that power should be exercised and consideration is being given to the issue. It has been contended that, in the greater scheme of things, the levy would not raise a significant amount of cash. What are the latest considerations in Government about why the levy is included in the bill if you might not use it? If it were to be used, how much cash would it be likely to garner?

Kevin Stewart: I am well aware of some of the evidence that the committee has taken. Infrastructure delivery is one of the biggest challenges facing local authorities at this time and it is important that the opportunity of introducing an infrastructure levy that could facilitate development is not missed.

The infrastructure levy would not be intended to fund all infrastructure requirements, nor would that be possible given the scale of those requirements across the country. Although receipts would likely be small compared with total public sector infrastructure spend, they would have a positive impact on infrastructure delivery by, for example, levering in other funding. We have done an amount of work and received an independent report on the infrastructure levy and how it might work. All that information is available on the Scottish Government website, and I am sure that many of you will have trawled through it.

We still need to do a number of things to get the measures absolutely right, so we are asking for the power to introduce a levy even if we would not necessarily to do so at this time. I will bring in Mr McNairney to cover the technicalities of our work on the levy.

The Convener: Before Mr McNairney provides that technical response, is it a fair summation that the Government considers that an infrastructure levy is the right thing to do in principle but that you want to make sure that you get it right in practice before you implement it?

Kevin Stewart: You are absolutely correct, convener.

The Convener: Do you want to add anything, Mr McNairney?

John McNairney: I will be brief. The levy was also a recommendation of the independent panel. We have looked at it in the context of our recognition that section 75 of the Town and Country Planning (Scotland) Act 1997 has limitations—its focus on restricting and regulating necessarily means that there has to be a strong connection between the improvement and the site. As we have seen from at least one court case, as you stretch the boundaries of section 75, you can fail to meet the tests. The infrastructure levy is an opportunity that we do not want to close our minds to, so we have focused on research, although we recognise that more work needs to be done.

The Convener: That is helpful. It may also be worth seeking the minister's views on an issue that is not in the bill but could, in theory, be in the same part of the bill that deals with the infrastructure levy. The Scottish Land Commission is carrying out a lot of work on land value taxes. Again, I am keen to tease out whether, if that is the Scottish Government's intended direction of travel, although we are not quite sure how it might work in practice, there is an opportunity in part 5 of the bill to seek the power to introduce a land value tax through secondary legislation. If the principle appears to be a good idea, doing that would allow us to roll out such a tax without having to return to primary legislation. Is there the potential to look at that?

Kevin Stewart: This bill is not the place for that, and we must allow other work to continue in that area. The Government has already said that it will enhance compulsory purchase orders and refresh the associated powers. We will look into introducing compulsory sale order legislation during this session of Parliament but, more important, we have to allow the Scottish Land Commission to take a hard look at land value taxes, which it is currently doing. The committee will have seen the SLC's report last week, which called for the state to lead in major public interest development. We have to allow the SLC to do that work, so that it can get it absolutely right, as with the infrastructure levy.

The Convener: I accept that that is the Government's reason and that you are not persuaded that the provision to implement land

value tax should be in the bill. However, the infrastructure levy is not good to go yet either and it is going to be in the bill.

Kevin Stewart: The difference is that we have consulted on the infrastructure levy but not on land value capture, compulsory sale orders or compulsory purchase orders. That has to be done in absolutely the right way. It is vital that we look at what the Scottish Land Commission comes up with on that before we move forward, doing the right and appropriate thing in terms of consulting on any propositions that we make.

The Convener: My final question goes back to the principle of the matter. It is always dangerous to give a local example, but I stay in the Summerston part of my constituency of Glasgow Maryhill and Springburn, in one of the houses that used to be a field a few years ago. All the fields across the road were green belt until the latest iteration of the local development plan, but that has now changed, opening the window for development there. Forgetting about the rights or wrongs of that and whether opposition to it is nimbyistic or whatever, I suspect that the land value has gone up substantially because of that redesignation in the local development plan. In principle, should some of that be captured for the public purse?

Kevin Stewart: I am not going to speculate about your area, convener, or any other, in that regard. As I have said, we have consulted on the infrastructure levy and we are moving forward on that, although there is still a bit of work to do. We have not consulted on land value capture or compulsory purchase and sale orders. We have to get that absolutely right, so those are discussions for a later date.

The Convener: Mr Simpson has a supplementary question.

Graham Simpson: I go back to report from the Delegated Powers and Law Reform Committee, which looked at the infrastructure levy. It makes the point that the powers

“are drawn very widely ... and inhibit the Parliament from conducting line by line scrutiny of policy”.

One of the three recommendations is that an enhanced form of scrutiny called the super-affirmative procedure should be on the face of the bill, so that Parliament can properly scrutinise whatever you decide that you want to do.

Kevin Stewart: My answer to the Delegated Powers and Law Reform Committee, which Mr Simpson convenes, was that I am happy to look at the affirmative procedure for that. I was also questioned about the matter by the Finance and Constitution Committee, following an appearance at Mr Simpson’s committee. Basically, I was asked

by Murdo Fraser whether it is a way for the Scottish Government to attract further resource for itself. I responded that it does not offer Mr Mackay the ability to add to his budget.

The Convener: You have got that on the record. We move to the next line of questioning.

Kenneth Gibson (Cunninghame North) (SNP): Regarding the planning authorities’ performance, a number of stakeholders have raised concerns about, for example, the length of delay in applications being processed. How can we monitor performance? Should it be monitored on the quality of outcome, on the speed by which the planning applications are processed or, I hope, by a combination of the two?

The Convener: Mr Gibson is feeling poorly this morning, so I thank him for persevering and asking some questions.

Kenneth Gibson: Thanks, convener.

Kevin Stewart: I wish Mr Gibson a speedy recovery.

Mr Gibson is absolutely right about planning authorities’ performance. The issue comes up regularly all over the place. Planning authorities lead the delivery of the planning service in their areas and have the primary responsibility for managing the operation of that system.

I acknowledge that sometimes applicant behaviour and other stakeholders that are involved in the process play a part in planning performance. We have commissioned research on barriers to decision making, so that we can get a more rounded picture of where delays lie. How we view performance has moved on a little bit in recent years. Speed of delivery is still a vital element of good performance, but there is more to it than that.

The planning performance framework and key markers already recognise planning performance as being about whole-service delivery. The policy memorandum states:

“The Bill will increase scrutiny of the full extent of planning authority performance; in how authorities carry out their functions and deliver their services, on the quality of their decision-making and on the outcomes for their areas.”

That sets out the holistic approach to managing and improving performance across all of planning that I want to see. As I said, we have commissioned research and I intend to keep a close eye on the matter. The form and content of performance reports will be defined following consultation and we will continue to work with the high-level working group on planning and other stakeholders to develop that.

Kenneth Gibson: How will the proposed performance monitoring blend in with the

performance monitoring that is already in the system? What differences will it make? Will there be any overlap or will it be as seamless as one would hope that it would be?

Kevin Stewart: The bill's provisions will complement other things that are already in the system. I expect that the provisions will formalise, improve and replace current arrangements. As folk are well aware, we have talked about appointing a performance co-ordinator in the bill. Some folk view that as a massive threat or as me trying to exercise authority or power. However, I view the role of the co-ordinator as ensuring that best practice is exported across the piece to help authorities that might have particular difficulties. I say to those who think that that will be an additional burden that the requirement for local authorities to report what has gone on in their areas is already there in their annual report on performance. I dispute that the appointment of a performance co-ordinator would be an additional burden.

Kenneth Gibson: Why are the functions of the national planning performance co-ordinator and the performance assessor not included in the bill whereas, in other pieces of legislation—for example, on prison inspection—such roles have been included?

11:30

Kevin Stewart: The co-ordinator's general functions are set out in the bill and the regulations will provide further details of a technical and administrative level—for example, how performance is to be monitored and how often reports should be prepared.

The co-ordinator's role is separate from that of a person who is appointed to conduct an assessment of the planning authority's performance. The assessor can be appointed to carry out an in-depth assessment of, and make recommendations on, any aspect of an authority's performance or its performance in general. The scope of that is to be tailored as appropriate.

I will bring in Mr McNairney for some of the more technical aspects and to save my voice.

John McNairney: Some of that is agreed informally but has not been put into legislation before now. The co-ordinator will, in essence, look to improve performance, help to share good practice and report to ministers on how performance is improving over the course of the year. The assessor's role is, of course, entirely different. The assessor considers a particular issue to do with performance and, again, reports to ministers.

The direction of travel is to ensure that we can improve performance and ensure that there are some teeth in the bill as we approach thinking about improving the resourcing of the system as well. There is a connection between the two.

The Convener: Because of time constraints, I ask for relatively brief supplementaries and responses.

Kevin Stewart: I will try, convener.

The Convener: I know.

Monica Lennon: The Scottish Government expects planning authorities to use processing agreements for all major applications and other complex local developments. Are you happy with the uptake of processing agreements? Does the Government have any evidence as to how they might be improving performance or delivery?

Kevin Stewart: I will bring in Mr McNairney on processing agreements—I know that he has opinions on the matter—and I will add to that.

John McNairney: There has been a slow take-up of processing agreements. Initially, the City of Edinburgh Council was at the forefront and it was clear from its experience that, as a project management tool for dealing with difficult, major applications, processing agreements were positive. They generally are positive, so we have continued to try to promote them. We cannot compel developers to enter into them, because they are agreements.

Kevin Stewart: Nor can we compel local authorities.

John McNairney: However, over the past five years, take-up has improved from a lower level. I think that there are now 1,200 annually.

Kevin Stewart: I have the latest figures for processing agreements in front of me: in 2015-16, there were 680; in 2016-17, there were 1,503.

Monica Lennon: From that data, are you able to tell us what the reason is for the clock being stopped? Is it a lack of information from developers or delays with other consultees, for example? Do you have that kind of information?

Kevin Stewart: I will bring Mr McNairney in and then comment myself on clock stopping and the level of attention that I have been paying to it.

John McNairney: We do not have information in every case. The information that we have relates to returns where there are particularly lengthy cases. The authorities provide us with reasons. Sometimes, it might be a staffing issue or workload. It could be an agency's delay. It could be information that has been sought during the process but not yet been provided. Those are common reasons, as are delays under section 75

of the 1997 act, which probably account for about 50 per cent of the overall processing times for major developments.

We do not scrutinise every case. Where originally agreed timetables are not met, there should be agreement by both parties on what the extended period should be. My understanding is that between 60 and 70 per cent of processing agreements meet the timescale. That is one of the ingredients in taking the view that, overall, such agreements are a good thing.

Kevin Stewart: I have been paying particular attention to things such as clock stopping as I have been receiving regular information on that, although sometimes that information is a little bit scant. I have concerns that it is sometimes far too easy to blame the local authority for something, when it may not necessarily be the performance of the local authority that is at fault.

As I said, some of the information is scant, and it would be fair to say that not enough is being done on that area. That is why we have commissioned research on reasons for delays and to explore the barriers to decision making. I am sure that the committee will want to look at that research once it is complete. I do not know what the timescales for the research are off the top of my head.

John McNairney: I am afraid that I do not know that.

Kevin Stewart: We will keep you in the loop.

Monica Lennon: It is unfortunate that that research was not commissioned earlier. We have heard anecdotally that planning is a barrier and a slow process, that it is bureaucratic and that the problem often lies with planning authorities, planners and the people who work in those departments. However, we do not really know what is causing delays. Some complexities are unavoidable. Some data will be reported to the Government and research is under way, but what will that research tell us?

Kevin Stewart: I do not know, which is why we are undertaking research.

Monica Lennon: We are being asked to examine the Planning (Scotland) Bill and we are tinkering and making transformative changes to the system, but we do not know what is causing delay and blockage.

The Convener: Is there a question?

Monica Lennon: An early indication on that research would be helpful.

Kevin Stewart: As I said at the beginning, we are on a journey and the bill is not the be-all and end-all. We have commissioned a huge amount of research in various areas as we have progressed

from the independent planning review all the way through to the stakeholder engagement, and we will continue to ensure that we have got all the available information.

The Convener: Can you give us an idea of the timeline?

Kevin Stewart: One of the reasons why we have commissioned the research is because I was not particularly happy about the information that we had—it was not enough. We will send you a note about the timeline and we will share that research once it is complete.

Graham Simpson: I have a quick question that follows on from what Mr Gibson manfully managed to get out earlier. When the bill talks about assessing a planning authority's performance, it says that ministers—I presume that that is you, minister—will appoint someone to look at the planning authority's performance. The bill says that ministers will set out the functions that are to be assessed and so on, but it does not spell out in any detail what is meant by performance and what kind of things would be looked at. Could that be sorted out at stage 2?

John McNairney: It could be widely defined. We have not specified that. As I said, in relation to section 75 consents, there can be particular themes at the root of delay. Performance could also be about how stakeholders, particularly community interests, are dealt with. It is not intended to be focused on speed of approval, for example; it is focused on the holistic way in which we want to consider performance.

Graham Simpson: So the power is a very wide one, which is my point. Perhaps you could spell things out more in the bill.

The Convener: That is a substantive question. I am not trying to take your question from you, Mr Simpson, but we are under time constraints. Will more information on that substantive point be available ahead of stage 2? I ask that just to allow us to move on.

Kevin Stewart: We can provide the committee with more detail on that. However, it has to be said that, in the communications that I get as minister and that others probably receive as members, issues about performance can be wide and varied. Such aspects are often raised by members of the public rather than by other stakeholders. However, we will get more detail for the committee.

The Convener: That would be helpful. My apologies for that, Mr Simpson. I will allow Alexander Stewart to ask his question.

Alexander Stewart: Performance is vital, as everyone understands. However, as we have touched on already, the pressures of work in a planning department, resource and workforce

planning implications and customer satisfaction with developers and individuals all come into the mix when we talk about performance. The question is how we manage that to ensure that what is intended in the bill becomes a reality. There is an apprehension that an element of sanction or control is coming through, and there is an issue about how councils will perceive that. Depending on which planning department in the country is involved, there may be thousands of planning applications or only a handful, and you will have to gauge how best to work that. Is it the intention that this is all about control and sanction?

Kevin Stewart: I will ask Mr McNairney to respond first and then I will come in.

John McNairney: The intention is that there will be some control. In practice, we work positively with stakeholders in the system. It might be that for some elements the assessor and the directing authorities are very much instances of the last resort, but they are there. The 2006 act contains provisions on assessment that were not implemented because things moved on and we moved to a performance framework and a collaborative approach to improving performance. However, as we move into the territory of significant fee increases, we will need to have a mechanism to ensure that those who are paying for full cost recovery can expect a reasonable service in return.

Alexander Stewart: Do you intend to have a value-for-money situation, then?

Kevin Stewart: It is not just about that. It can be frustrating that I have coming across my desk—as we all do, from time to time—statements such as, “This is a problem—how are you going to deal with it?” and, at the moment, we have nothing at our disposal for dealing with performance.

I always prefer carrot rather than stick; I prefer a light-touch approach where at all possible. I would prefer our role to be the positive one of ensuring that we export best practice right across the country. However, we will see what occurs: the proof of the pudding is in the eating. The vast bulk of the issues that cross my desk are not necessarily those that people would expect. It would be fair to say that, in recent times, most of the complaints that I have had about performance are from community groups in relation to certain authorities that I will not name here, convener.

The Convener: Before we move on to the next line of questioning, which will be led by Andy Wightman, I want to make a point. In monitoring performance in the national health service, one of the things that has been brought in is called Care Opinion, through which good, bad and indifferent experiences of the NHS are captured and garnered and put out there almost in real time.

One thing that that has shown is that we do not necessarily get to hear about the good stuff alongside the negative stuff.

Could we have a positive side to monitoring performance that captures positive opinions? I am thinking of examples such as an individual who sought to build an extension to their house and had a supportive and seamless planning process, or a community group that made representations in pre-consultation and felt that they were listened to when the substantive planning application was submitted. Is there data out there that could give us a flavour of performance that we are currently missing and is that something that we could act on?

11:45

Kevin Stewart: We sometimes hear about the bad rather than the good in this life. In my position, I sometimes hear the good as well as the bad. There is good practice in many places and we celebrate that good practice regularly. Recently, I had the good fortune of attending the planning awards, which provide an opportunity for folk to network and share good practice. In the review, we would look at 360 degree feedback as part of monitoring. Mr McNairney might like to add more on the data that we have.

On Care Opinion, I think that it is run by an independent organisation, and it is useful.

The Convener: I am not trying to bounce you into a yes or no.

Kevin Stewart: I will not be bounced.

The Convener: My question is whether you are sympathetic to that kind of platform.

Kevin Stewart: I am sympathetic to the monitoring that we have talked about.

John McNairney: Authorities take feedback from stakeholders and include that in their current planning performance returns, so there is some indication of that. There are 15 markers in the performance framework, so it is fairly wide. However, we probably do not celebrate or promote the good things enough—there is tonnes of good practice in the planning system, across a wide spectrum of activity.

Kevin Stewart: I will reflect on what you have said about Care Opinion, convener.

The Convener: Thank you—I would appreciate that.

Andy Wightman: I want to raise some equality issues. Engender has drawn to our attention the fact that the planning system must be fully inclusive and that planning is a very gendered issue. Engender cites examples from Vienna,

where gender equality has been incorporated into urban planning. The equality impact assessment needs to critically engage with gendered issues, but Engender argues that the Planning (Scotland) Bill does not achieve that. It says that, in terms of gender, the bill's equality impact assessment is "exceptionally bad". Engender goes on to say:

"At present, it does not meet minimum standards set out by law and thus cannot assist the Committee in adequately considering equality dimensions of the Bill."

What is your reaction to that, minister?

Kevin Stewart: I saw the Engender submission only this morning. I believe completely and utterly in equality and I will look through the submission and reflect on that.

The Convener: The committee has only just had the opportunity to look at that submission, too. However, we wanted to ensure that that concern was put on record.

Monica Lennon: I would have been more reassured if you had made a defence of the equality impact assessment, minister. I look forward to getting more information from the Government on that.

We have heard a lot of evidence about front loading, which was an aspiration of the 2006 act and continues to be an aspiration in the bill. What is front loading and why are we not yet in touching distance of it?

Kevin Stewart: I do not agree with Ms Lennon that front loading has failed, although it can be improved and, in some cases, dramatically improved. We talked about celebrating what we get right. We have seen extremely good examples of public engagement to capture the views and opinions of local people in places such as Aberdeen and Dundee. Highland Council and TAYplan have been recognised for their work with communities, including children and young people, which we talked about earlier.

The charrette programme is a good example. Earlier, we touched briefly on the place standard, which, in my opinion, has been very successful. Without a doubt, more can be done to embed front loading through our proposals for the national planning framework and through development planning, local place plans, SDZs and pre-application consultation. However, I do not agree with the concept that front loading has failed, because there have been success stories in many areas.

Monica Lennon: It is interesting that you gave TAYplan as an example of success, because I believe that it will be abolished under the proposals.

We have heard in evidence that public confidence and trust in planning are quite low and we have heard examples of how communities feel disengaged and not listened to. We have heard that community groups feel that some developers approach pre-application consultation as a tick-box exercise, because of the way in which notice is given of public meetings and what is reported back to councils as having happened at those meetings. People do not feel that the pre-application consultation really adds value or changes anything. Does the minister recognise those concerns?

Kevin Stewart: In some cases, there has been good practice on pre-application. We often lose sight of the fact that many developers do a huge amount of work in consulting and bringing community views into play.

I offer one example off the top of my head. Sanctuary Housing Association is developing housing for key workers at the site of Craiginchies prison in Aberdeen. At the cutting of the ground there, I had the opportunity to talk to local residents, who felt extremely included all the way through the process. A number of the original plans were changed to take cognisance of their views. In many cases, there is a change of attitude in that regard, but there is still a way to go in some places. A wise applicant will take cognisance of the views of the folk in the application area.

Monica Lennon: We have heard in evidence from a range of stakeholders—community groups, in particular—that they do not feel that there is a level playing field. They cannot match developers in terms of resource, expertise and legal rights in the process. That brings us to a point at which, 12 years on from the previous planning bill, there is a growing debate on, and a growing demand for, equalisation of the system through the introduction of an equal right of appeal.

A couple of days ago, you wrote to us to put on record that the Government is firmly opposed to an equal right of appeal. Is the Government, in principle, totally against equalising appeal rights?

Kevin Stewart: We have made it clear that we agree with the independent planning review panel, which did not recommend an equal right of appeal. An equal right of appeal would add conflict at the end of the system. I would rather concentrate on the beginning of the system with a view to getting people together to iron out differences and arriving at a situation in which agreement can be reached in many cases, as happened with the Sanctuary Housing Association development at the Craiginchies site. That is a much better way of dealing with the issue.

If we end up with an equal right of appeal, what will happen in many places is that communities

and developers will concentrate right from the beginning on the conflict at the end, rather than sitting down and discussing what is required for the community.

Monica Lennon: You mentioned the independent panel. According to written evidence from Scottish Environment LINK,

“The issues around equal rights of appeal were not fully explored by the independent panel. The issue was touched on briefly only and not given the depth of consideration such a fundamental issue requires.”

Where is Scottish Environment LINK coming from?

Kevin Stewart: I will bring in Mr McNairney, because he was in post when the independent panel carried out the review. I was not planning minister at the time—

Monica Lennon: But you must have a view on the panel’s work.

Kevin Stewart: I do have a view. If you will allow me to, I will give you that view. I think that it is unfair to say that the independent panel did not take the views of all people. Mr McNairney has more information on exactly what the independent panel did.

The Convener: Before I bring in Mr McNairney, I point out that lots of members have supplementaries, including me. I advise anyone else who wants to come in to get my attention now, otherwise we will run out of time.

John McNairney: The panel issued a call for evidence and took written and oral evidence. It set out a number of questions, not all of which I have in front of me, but one of them concerned the balance of rights and whether improvements could be made to that. That was part of the context in which people offered views. There were people whose view was that there should be a third-party or equal right of appeal and others who took a different view. It was not the case that the review panel did not consider the issue; having considered it, one of its 48 recommendations was that no change should be made to the appeal rights.

Therefore, we did not actively pursue the issue—we did not have a separate consultation on rights of appeal—but we set out our position in the consultation that we issued last year. Throughout the process, people have made their views known. Ministers set out their statement following the recommendations of the independent panel, and it was broadly supportive of those recommendations, including that there should be no significant change to rights of appeal.

Monica Lennon: A couple of weeks ago, we took evidence from Petra Biberbach, who was on the independent review panel. We know that she

is on record as not being in favour of equal rights of appeal, but during the discussion she accepted that there should now be a debate on the issue. Why would there need to be a debate on it if it is clearly not the right thing to do? She recognised people’s concerns and frustrations with the system and thought that there should be a debate on the matter.

Kevin Stewart: I recognise people’s frustrations, and the last thing I want to do is add to those. The Scottish alliance for people and places said in its response:

“We are concerned that the introduction of this measure will create further conflict between communities and other stakeholders in our places and undermine the collective ambition for a positive, front-loaded planning system that incentivises participation at the very beginning and throughout the process.”

I agree with that. I would much rather that we deal with this at the beginning, because if at the end of the day we were to equalise rights of appeal, I can foresee that there would be a huge amount of conflict at the end of the process and that not many folk would speak at the beginning of it, which is actually the right time for them to speak to one another.

I will bring in Mr McNairney again.

John McNairney: Stakeholders focus on a particular issue, but the whole system is relevant to this issue. A lot of the frustration for communities is that they do not have the certainty that we want them to have about which sites are going to be developed.

The development plan and changes to it are key, because if we can get better information from developers about how deliverable sites are so that they can be carefully considered and, at the gate check and beyond, we can get everything right, we will have a plan in which stakeholders generally can have some confidence. The problem at present is that shortcomings in, say, effective housing land emerge at the end of the process, and that causes tension for all stakeholders.

12:00

Monica Lennon: That all sounds persuasive, but the bill also proposes that ministers be able to come along and designate simplified development zones, even though a development plan might have been adopted and the community might not want the SDZ. That will introduce more conflict, so it does not seem consistent that you are introducing other processes but firmly closing the door to communities having anywhere near the rights that developers have.

Kevin Stewart: I will not go back to simplified development zones, because everything that I have said about them is on the record.

My great fear is that there is already too much conflict and mistrust in the system. An equal third-party right of appeal can only add to that. In some cases, developers and communities would be much more likely to adopt a tactical approach, aiming to win an appeal rather than to engage at the outset. Initial engagement is absolutely vital. That is why the emphasis in the bill is on dealing with everything at the beginning.

As I have said, we are following the independent panel's recommendations. It is unfair to say that it did not discuss the issue in depth, because it did. Even though we made it clear from the beginning that the Government was not in favour of an equal right of appeal, those discussions have still taken place at many of the fora that I have attended and many more that Mr McNairney and his colleagues have attended.

John McNairney: As I said, we did not do a separate consultation on rights of appeal, but people have made their views known throughout the past two years.

The Convener: It is reasonable to say that, when it comes to planning, regardless of whether anyone—including the committee, in its call for evidence—explicitly asks for views on an equal right of appeal, they will get them anyway. We have had substantial evidence in favour of and against an equal right of appeal.

Minister, in your letter, you make the point that, "Since 2014, around 5,500 housing units have been approved"

because of a developer's right to appeal. Some—not all—of the proponents of an equal right of appeal say that that could be achieved by taking away the developer's right to appeal. Would that cause you concerns about meeting national house-building targets, for example?

Kevin Stewart: I have the dilemma, but also the huge opportunity, of being in the post that I am in. That leads to different conversations with different people, and it sometimes leads to very strange conversations about some of the issues.

I will give an example. I am sorry if I am going over old ground—I might have told the story before. I spoke to a woman who said, "We desperately need more housing in this area, minister," and the next line was, "but you canna build it here, here, here and here." There is a balance to be struck in planning properly for the housing needs of an area. As I pointed out in my letter, other developments that can often be seen as controversial but which are entirely necessary have been decided upon on appeal.

The Convener: I am trying to be helpful—I have given every other set of witnesses an opportunity to put their views on the issue on the record. In the

annex to your letter, you mentioned 5,500 families who are currently in houses but who might not have had them if the developer had not had the right to appeal. Do you have concerns about that, or not? You talked about some people having what we might call a nimbyist approach, but would you have concerns about national strategic targets if we were to seek to withdraw a developer's right to appeal?

Kevin Stewart: That is a possibility. It might not be a national problem, but we could have a situation in a particular area in which a decision had been taken not to build any homes when it was quite clear that there was a need and a demand for housing. If there is not the ability for developers to appeal in such situations, does that mean that we will not build homes and not meet the needs of people in those areas?

The Convener: I have a final question and then I would like other members to come in. I am trying to interrogate the letter that the minister sent to the committee. One suggestion is that recognised community groups should have a right of appeal—which might deal with Mr Wightman's problem about his sister in Switzerland. I do not think that she would be part of a recognised community group, but she might—you never know.

The point that I am trying to get to is this: I think that what you are saying, minister, is that if we were to go down that road it would be quite difficult to identify what a "recognised community group" would be or would look like. From my local experience, I sometimes agree with folk who say that they just do not want development in their area—I am one of those people, sometimes. We all have our own self-interest and awareness, but I sense from your letter a feeling that there will always be some people who are against things and that an equal right of appeal would, almost automatically, trigger a number of appeals because that is just the position that some people take. Sometimes I am in that position over local development.

Perhaps we could talk a bit about what a recognised community group would look like and how it could be defined. If we were to go down that road, would it just build resistance to developments at the outset of the process?

Kevin Stewart: Defining "recognised community group" would be very difficult indeed and there would be arguments over what one actually is. That is why the Government and I are not in favour of doing that. We could argue about a definition forever.

Some folk have suggested that the recognised community group could be, for example, a community council. However, we all know that many community councils across the country are

not reflective of the views of the communities that they purport to represent. I speak only from my experience as an elected member: in the years in which I have been a councillor and a parliamentarian, I have come across folk in groups who have said that they will oppose any development in a community. I have come across a community council that was initially formed to oppose changes to a park, but that was not reflective of the views of that community. Designated community groups having an equal right of appeal would open up a can of worms and create even greater conflict, and might actually lead to a huge amount of community division.

Monica Lennon: I want to explore that point. If community councils in a lot of places are unrepresentative, why do they have statutory rights in the planning system and why are you giving them the power to introduce local place plans?

Kevin Stewart: We are where we are, as far as the legislation is concerned: community councils have such powers from the Local Government (Scotland) Act 1973. We are embarking on a local governance review in co-operation with local government and community partners, in the course of which we will look at all such aspects.

Monica Lennon: Are you saying that community councils can be trusted to introduce local place plans but not to make judgments on whether to take appeals on planning decisions?

Kevin Stewart: I am saying that bodies can propose local place plans—the body does not necessarily have to be a community council. As with other aspects of local governance, they are from 1970s legislation, and they will be looked at with all the other aspects as we embark on the local governance review.

The Convener: We will close the meeting at 12:20.

Andy Wightman: I say for the record that I have in front of me the questions that the independent review panel asked in its consultation, and I do not see any questions on rights of appeal, although there is one question on whether we need to change the system to ensure that everyone has a fair hearing.

You said that you are following the recommendations of the independent review. The independent review talked only about a third-party right of appeal. Recommendation 46, for example, says that there should not be a third-party right of appeal, but the review did not ask questions about appeals or say anything about the applicant's right of appeal. Can you confirm that the independent review did not say anything about whether an applicant's right of appeal should remain unreformed?

Kevin Stewart: I do not have the report in front of me, so I cannot say yea or nay to that.

Andy Wightman: I will ask a brief supplementary. In a letter to the committee, on the idea that rights of appeal could be tied to compliance with the local development plan, you suggest that consistency with the plan would be very difficult to determine. As I understand matters, however, prior to 2006 local planning authorities were required to notify ministers of decisions that represent a departure from the local development plan. There are a number of other examples in planning policy, such as the requirement that planning authorities notify ministers if they are minded to grant permission for a planning application

"where proposals represent a significant departure from the approved structure plan".

I suggest that planning authorities are well used to making such judgments.

Kevin Stewart: I think that authorities did some of that in the past. I will bring in Mr McNairney to speak about that. I would like to come back after that, convener.

John McNairney: All that Mr Wightman said is true. Judging whether to advertise a development as being contrary to the development plan was certainly not clear cut. Especially for major developments, it could be found that a development is contrary to some policies in the plan but is generally consistent with the allocation. Would the development then be contrary to the development plan?

It is not always possible to make a straightforward judgment. Reporters will have seen cases in which an authority has refused an application on the basis that it is contrary to the development plan, but the reporter takes the view that it is not. It is not a clear-cut, black-and-white judgment. That is another element of potential complexity.

Kevin Stewart: For the record, I will say that the Government is not in favour of an equal right of appeal or—

Andy Wightman: I am sorry, can you clarify what—

Kevin Stewart: —or of proposals for a limited right of appeal. Beyond that, we are not in favour of removal of the applicant's right of appeal, as I outlined in my letter to the committee.

Andy Wightman: I will let others in. Time is pressing.

The Convener: Time is pressing, but I am open to members following up on some of that, although we are about to close. The committee will have to

sit down, balance the evidence and decide on the issue for our stage 1 report.

If the committee does not favour an equal right of appeal, how do we know that there has been successful front loading in the bill? I think that the deputy convener made the point about the 2006 act that it may not have done everything that it was meant to do in relation to front loading. After 10 years—that would be the duration of new local development plans—how would we know what success looks like in relation to front loading, rather than equal right of appeal, and how would that be monitored?

Kevin Stewart: First of all, no matter what we put into play, there will be instances in which people do not get the results that they want from planning. We will continue to monitor how planning is operating and how our proposals turn out in terms of performance management, stakeholder satisfaction and how engaged people become.

12:15

The committee should also be aware that if you recommend limited or equal rights of appeal, you will have to consider how local authorities would resource that, because there would be added costs. I have no idea what that resource burden would be, but it would divert resources from the up-front planning and collaboration that I and many others want, and it could lead to further gumming up of the system.

Monica Lennon: What information can you share with the committee about the current cost of developer-led appeals? We heard from industry witnesses a couple of weeks ago that developers are spending tens, if not hundreds of thousands of pounds on appeals related to major applications, and that legal costs are sometimes awarded against local authorities by the planning and environmental appeals division reporter. I know that in North Lanarkshire such costs have run into hundreds of thousands of pounds. Have you looked at the cost-benefit side of developer-led appeals?

Kevin Stewart: I do not know the answers off the top of my head, and I do not think that anybody would expect me to keep that information at the front of my mind. I will talk to the planning and environmental appeals division—the DPEA—and others to see what, if any, information we can provide on that front.

The Convener: Perhaps after 3 hours we can forgive you for not having that at the front of your mind. It has been a marathon meeting. It had to be, to be quite frank, because there is a lot in the bill and we had to scrutinise every part of it.

I thank you and your officials for attending here today. We look forward to your response to our stage 1 report.

Kevin Stewart: I appreciate the opportunity, convener.

Subordinate Legislation

Non-Domestic Rate (Scotland) Order 2018 (SSI 2018/46)

Non-Domestic Rates (Telecommunication Installations) (Scotland) Amendment Regulations 2018 (SSI 2018/63)

Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2018 (SSI 2018/64)

Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018 (SSI 2018/65)

Non-Domestic Rates (Levying) (Scotland) Regulations 2018 (SSI 2018/74)

Non-Domestic Rates (New and Improved Properties) (Scotland) Regulations 2018 (SSI 2018/75)

Non-Domestic Rates (Transitional Relief) Amendment (Scotland) Regulations 2018 (SSI 2018/76)

Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 2018 (SSI 2018/77)

12:17

The Convener: Agenda item 2 is subordinate legislation. The committee will consider the instruments that are listed on the agenda. They have been laid under negative procedure, which means that the provisions will come into force unless the Parliament agrees to motions to annul them.

I confirm to members that no motions to annul have been lodged. I invite members to comment on the instruments.

Andy Wightman: I want to put on the record once again my dissatisfaction that we deal with important orders about tax—in particular the Non-Domestic Rate (Scotland) Order 2018, which sets a rate of 48 pence in the pound and is the second-highest tax-raising power that Parliament has—via instruments that are subject to negative procedure, which I do not think allows for sufficient scrutiny.

The Convener: That is your consistent opinion, Mr Wightman. You have now put that on the record. Does the committee, unanimously or

otherwise, agree to make no recommendations on the instruments?

Members *indicated agreement.*

The Convener: Those points are now on the record. Agenda item 3 will be taken in private.

12:18

Meeting continued in private until 12:53.

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