COMMUNITIES COMMITTEE

Wednesday 13 September 2006

Session 2

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COMMUNITIES COMMITTEE
23rd Meeting 2006, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Euan Robson (Roxburgh and Berwickshire) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Christine Grahame (South of Scotland) (SNP)
*Patrick Harvie (Glasgow) (Green)
*John Home Robertson (East Lothian) (Lab)
*Tricia Marwick (Mid Scotland and Fife) (SNP)
*Dave Petrie (Highlands and Islands (Con)

COMMITTEE SUBSTITUTES

Chris Ballance (South of Scotland) (Green)
Alex Johnstone (North East Scotland) (Con)
Christine May (Central Fife) (Lab)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)
Sarah Boyack (Edinburgh Central) (Lab)
Donald Gorrie (Central Scotland) (LD)
Fiona Hyslop (Lothians) (SNP)
Johann Lamont (Deputy Minister for Communities)
Pauline McNeill (Glasgow Kelvin) (Lab)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 4

Scottish Parliament

Communities Committee

Wednesday 13 September 2006

[THE CONVENER *opened the meeting at 09:30*]

Planning etc (Scotland) Bill: Stage 2

The Convener (Karen Whitefield): I open the 23rd meeting of the Communities Committee in 2006 and remind everyone present that mobile phones should be turned off.

The only item on today's agenda is our third day of consideration of amendments to the Planning etc (Scotland) Bill at stage 2. Members should have before them their copies of the bill, the marshalled list and the groupings. I welcome the Deputy Minister for Communities, Johann Lamont, to the committee. She is accompanied by the following Scottish Executive officials: Tim Barraclough, John McNairney, Alan Cameron, Norman MacLeod and Stuart Foubister.

I also welcome to the committee Donald Gorrie, John Farquhar Munro and Sarah Boyack, all of whom I know have an interest in the committee's considerations today.

For the benefit of all those present, I should explain that this morning, and during the remainder of stage 2 consideration of the Planning etc (Scotland) Bill, we will be using our electronic voting system should there be any divisions on amendments.

It might be helpful to point out a few things before we commence. First, to speed things along, if a member does not wish to move their amendment, they should simply say, "Not moved." In that event, any other member may move the amendment, but I will not specifically invite other members to do so. If no other member moves the amendment, I will simply go to the next amendment on the marshalled list.

Secondly, if a member wishes to withdraw an amendment, I will put the question, "Does anyone object to the amendment being withdrawn?" If any member objects, I will immediately put the question on the amendment.

Finally, if I am required to use my casting vote, I intend to vote for the status quo, which on this occasion is the bill as it stands.

Before section 3

The Convener: Amendment 175, in the name of Patrick Harvie, is grouped with amendment 124.

Patrick Harvie (Glasgow) (Green): Amendment 175 would extend the sustainable development duty that is already present in the earlier sections of the bill in relation to the national planning framework and other aspects to development management.

During our stage 1 inquiry and previous stage 2 debates, I was very pleased about the extent to which sustainable development has been accepted across the political spectrum as being a large part of what the planning system should be about. We might differ at times over exactly what it means, and I might take a slightly more pessimistic view of the extent to which we have achieved sustainable development in Scotland at present, but we all agree that the planning system is an important tool in achieving sustainable development, whatever we regard that to mean.

The usual argument against extending the duty to development management is that it would place unnecessary burdens or impose restrictions in individual cases or on certain developments—it would create unnecessary hoops to jump through. Amendment 175 provides for Scottish ministers to issue guidance on the interpretation of the legislation, which would overcome that problem. I think that it is worth pushing the issue.

I move amendment 175.

Donald Gorrie (Central Scotland) (LD): Amendment 124 covers two points: first, existing buildings for which better insulation or a microrenewable energy scheme is sought; and secondly, energy efficiency and microrenewables in new buildings.

There have been a number of examples of planning committees making what I regard as bad decisions against people who want to improve their house with double glazing, solar panels or one of those modern, neat little windmill things on the roof. At the moment, there seems to be an assumption against them and I am trying to achieve an assumption in favour of them, all other things being equal. I am not saying that planning committees must approve such schemes, as there might be exceptionally strong amenity grounds why they should not. However, the assumption should be tilted in favour of the applicant who is trying to improve the energy efficiency of a house or group of houses or to introduce a local microrenewable scheme.

There are examples of housing associations that have not had as much co-operation as they might in trying to produce really good, modern, energy-efficient new houses. Again, the assumption should be in favour of the inclusion of energy efficiency schemes and microrenewable power sources in new developments. The more we have local microrenewable schemes, the less we will

have huge arguments about tall pylons and so on. The more energy can be created locally, the better it will be from everyone's point of view.

I welcome the fact that other members have different approaches to the bill and other proposals, but I think that it would be helpful to have a little bit in the Planning etc (Scotland) Bill to promote the sort of ideas that I have spoken about.

I hope that the committee will accept amendment 124.

Christine Grahame (South of Scotland) (SNP): I have a question for Donald Gorrie, which the minister will perhaps also pick up on. I am sympathetic towards amendment 124, but I would like to know what Donald Gorrie has in mind. I was hoping that he would explain what he meant by "exceptionally strong amenity grounds". That is where the rub lies. Perhaps Donald Gorrie could give some concrete examples; the minister might be able to talk about that, too.

The Convener: Dave Petrie, do you wish to contribute?

Dave Petrie (Highlands and Islands) (Con): No—I was just chewing my pen.

The Convener: I am sorry—I thought that you were indicating an interest in the debate.

I invite Mr Gorrie to respond to the specific points that Christine Grahame raised.

Donald Gorrie: This is one of those times when I have to cop out. I do not think that the law can contain something precise enough to cover every area. It would be up to the local planning committee to make the decisions. Presumably, in attractive areas that committees would not wish to spoil, they would take a slightly different view.

There would have to be exceptionally strong amenity grounds not to approve schemes, and there would have to be more than just one or two neighbours saying that a proposal was not a good thing.

The Deputy Minister for Communities (Johann Lamont): Patrick Harvie's amendment 175 seeks to introduce a further sustainable development duty into the bill, covering the whole of part 3. The existing sustainable development duties in sections 1 and 2 relate specifically to Scottish ministers in relation to the national planning framework and to planning authorities as regards development planning. I do not think that a further duty is appropriate.

We want there to be a specific focus on the need for sustainability at the early stages of the planning system. A similar duty that applied to the detailed determination of planning applications, appeals and other decisions would carry a risk of greater uncertainty and delay and would greatly increase the scope for legal challenge, putting planning matters back into the courts—which would then become the forum for determining what constitutes a contribution to sustainable development. As there are about 50,000 planning applications in Scotland every year, such a change could affect the efficiency of the system. In any case, our reforms mean that applications for developments that are not in development plans will be subject to much greater scrutiny.

The committee has already rejected an amendment with a very similar effect to that of amendment 175 and I urge members to reject amendment 175 as well.

Donald Gorrie's amendment 124 identifies energy-related issues as material considerations that should be enshrined in legislation. I agree that such issues are indeed important.

A theme that runs through all dealings with legislation is whether the legislation is a means of promoting an idea. There is a distinction between the policy or politics behind an issue and what goes into the legislation, and there will always be arguments over what should and should not go in. I reassure Donald Gorrie that we are very aware of the issues surrounding microrenewables. He will know that we have issued a planning advice note on microrenewables and are currently undertaking research on permitted development rights for microrenewables. That will probably address the issue that Donald Gorrie has raised.

We accept that the issues are important, but existing legislation already ensures that all material considerations are taken into account when determining planning applications. Where relevant, those will include the considerations that Mr Gorrie proposes. It would not be appropriate to single out specific issues in legislation, particularly when they are often addressed by control regimes outwith planning. Already, the Executive includes guidance on how the planning system should deal with certain developments in its planning policy statements and advice.

On the promotion of sustainable development, the Executive is taking forward significant work on planning policy, building standards and energy and environmental efficiency to ensure that the principles behind amendment 124 are more appropriately integrated into the relevant processes. Therefore, I recommend that the committee rejects amendment 124.

Patrick Harvie: Two points were raised on amendment 175. The first was that there is perhaps a lack of clarity over what a contribution to sustainable development really means, which could result in cases going to court. I feel that what a contribution means can be clearly set out in

Executive guidance, so I do not accept that argument against the amendment.

The second point was that we want sustainable development to be built in early on. An issue that developed during our consideration of the bill at stage 1 was that people's understanding of sustainable development evolves. It would be regrettable if we found that a more up-to-date or useful interpretation or understanding of sustainable development could not be applied because, when a development plan had been approved, less up-to-date thinking had been current.

Having considered the points raised, I would like to press amendment 175. I offer it as the first sacrifice to the new electronic voting system.

The Convener: The question is, that amendment 175 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Home Robertson, John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 175 disagreed to.

Section 3—Meaning of "development"

09:45

The Convener: Amendment 176, in the name of John Farquhar Munro, is grouped with amendment 177.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Thank you, convener, and good morning.

I lodged amendment 176 in the hope that it would give more control to every local authority. All developments, both large and small, on or near the coastline of Scotland are currently controlled by agencies outwith the control of the local authority. That often causes difficulty and delays in the small planning applications that the local authorities have to deal with. The amendment would give each local authority control of the shoreline adjacent to their area to a baseline of 10m from the high-water mark. That would help local authorities to approve many of the small local developments that they are asked to decide on.

Currently, if a small local development is proposed, the local authority and applicant have to consult other agencies, in particular the Crown Estate commissioners. There can be a lengthy delay before a decision is arrived at, whether that is favourable or otherwise. Amendment 176 would address the situation and give local authorities control of the shoreline out to a depth of 10m. That is worth supporting.

I move amendment 176.

Dave Petrie: Have you discussed the amendment with the Crown Estate commissioners and, if so, what was the reaction?

John Farquhar Munro: Not directly, but I know that local authorities have been campaigning for many years to have control of the seabed adjacent to the coastline. For instance, Highland Council has suggested that it could quite easily monitor and control any developments involving fish farming and larger schemes around the coast. The Convention of Scottish Local Authorities and the local authorities themselves have decided that the proposal merits support. I think that an agreement was reached many years ago but was never implemented, so local authorities currently find their hands tied when they receive an application that may infringe on their shoreline.

Dave Petrie: But would it not be another burden on local authorities?

The Convener: Excuse me, this is not a debate. If we have time, I will allow Dave Petrie to contribute again.

Dave Petrie: Thank you.

John Home Robertson (East Lothian) (Lab): I have sympathy with what John Farquhar Munro is proposing. He is right that development on the seabed adjacent to the coast is subject to control not by local planning authorities but by unaccountable Crown Estate commissioners. That fact came to my attention many years ago when a Kent-based company wanted to extract large quantities of marine aggregates from the seabed just off the John Muir country park in East Lothian. I found it astonishing that someone who wanted to build a porch on their house onshore would require full planning permission, whereas that company could be allowed to extract hundreds of thousands of tonnes of aggregate from the seabed just offshore. As it happened, that did not occur, but I found it extraordinary that the decision was for the Crown Estate commissioners, who are not accountable to anybody. Onshore, it would obviously have been a matter for planning controllers.

I remember presenting a 10-minute rule bill in the House of Commons many years ago to

address the point. John Farquhar Munro's suggestion is interesting, and I hope that the minister will give it positive consideration, even if it is not possible to accept the specific amendment.

The Convener: Mr Petrie, I am going to allow you to make your other point, and Mr Farquhar Munro can respond to it when he winds up the debate.

Dave Petrie: Thank you, convener.

I just wanted to make a point about how local authorities are already stretched and could be further stretched by the bill. If the amendment was agreed, would it also have a major impact on staffing resources for local authorities?

John Farquhar Munro: No, I think that—

The Convener: Mr Farquhar Munro, these are points that you can respond to in winding up the debate. I ask the minister to comment on the amendments.

Johann Lamont: In the partnership agreement, which members know off by heart, we undertook to consult on the best strategy for protecting and enhancing Scotland's coastline. In developing the strategy, ministers want to ensure that all current and future marine-related activity is properly co-ordinated in a coherent sustainable development framework. There is no doubt about the complexities of the strategy, which have been highlighted in the discussion, and I do not pretend to be entirely on top of them. Many issues have already been flagged up.

The Minister for Environment and Rural Development chairs an advisory group on our marine and coastal strategy that is considering the potential for marine spatial planning and how such a system might operate in practice. The strategy will build on existing initiatives to provide a clearer description of how they interrelate and of the overall policy objectives that they serve. It will inform the Executive's input to wider United Kingdom and European Union policy development. No decisions have yet been taken on whether new legislation will be required.

Work is under way to consider how to ensure that the fundamental principles of sustainable development are applied to marine-related activities in a way that matches the unique circumstances of our coastal areas and territorial waters.

I consider the provisions in the Planning etc (Scotland) Bill, together with relevant provisions in the Town and Country Planning (Scotland) Act 1997, to be perfectly sufficient to enable the designation of areas over which relevant planning authorities will have powers to manage and control marine fish farms. In particular, the definition of "land" in section 277 of the 1997 act includes land covered by water. I regard amendments 176 and 177 as being premature, coming in advance of deliberations, and unnecessary for marine fish farming. Therefore, I recommend that the amendments be rejected, although I am happy to learn a great deal more about the subject between now and when we might have to discuss it again.

The Convener: Mr Farquhar Munro, this is now your opportunity to respond to all the points that have been made and to indicate whether you wish to press or withdraw your amendment.

John Farquhar Munro: Mr Petrie asked whether local authorities would be involved in additional work, but I do not accept that that would be the case. At present, authorities have to deal with external agencies, so the planning process is delayed and they are involved in much more work than they would be involved in if they had complete control of the foreshore. I am thinking about local authorities being able to approve not huge developments, such as fish farms, but smaller applications. For example, if an individual wants to build a boat mooring, the local authority might be more than happy to grant approval, but it would have to consult the Crown Estate commissioners, who are not the fastest people to respond and who usually extract a huge fee for the privilege of putting down a mooring; or if someone wants to build a house but no public sewer is available, they have to provide their own septic tank and discharge an outfall to the low-water mark, which requires the approval not of the local authority but of the Crown Estate commissioners, who once again extract a hefty fee for giving their approval. There are many reasons why local authorities are unhappy with the current situation.

I gather that amendment 176 has considerable support in the committee. I invite committee members to agree to the amendment so that local authorities have the ultimate control of the seabed out to the 10m baseline.

The Convener: Am I correct to assume that you wish to press amendment 176?

John Farquhar Munro: Yes.

The Convener: The question is, that amendment 176 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 176 disagreed to.

The Convener: Amendment 121, in the name of John Home Robertson, is grouped with amendments 162 and 188.

John Home Robertson: I thank the minister for visiting Dunbar on Monday to see some of what we are doing in East Lothian, but I make no apology for coming back to her on Wednesday to ask for action on our most serious problem.

Amendment 121 would designate affordable housing as a distinct land-use class in Scottish planning legislation. Members may recall from earlier discussions in the committee and in the chamber that East Lothian and several other parts of Scotland have a critical shortage of affordable housing for rent. The lack of sufficient council and housing association houses compels many families and single people to exist in overcrowded, unsuitable and often unaffordable accommodation for years.

To be frank, the housing waiting list in East Lothian has become a work of fiction. Regardless of high points scores for overcrowding, medical needs and other priorities, people can languish on the waiting list for years or decades or indefinitely. Let us face it: young families who are squatting in their parents' living-rooms and elderly people who are struggling with stairs to upstairs flats are going to be there for ever unless we find a way to increase the stock of affordable housing for rent.

People who are caught in that trap become frustrated and angry. Rightly, they express that anger to their MSPs and councillors and to local housing authority staff. I submit that the buck stops here in the Parliament and that we have a duty to provide for the basic human right of Scots to have access to decent affordable housing.

The situation is even worse in East Lothian. As I predicted when we debated the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004, which banned the use of bed-and-breakfast accommodation for homeless families, there is not even enough stock available to allow East Lothian Council to comply with that order, let alone to provide for those who are stuck on the waiting list. That is why I voted against the order a couple of years ago.

The Executive has complained that the council breached the order 75 times in the six months to the end of January. That is quite so, although the council has bought back 150 houses at a colossally higher cost than the discounted price at which they were sold to previous tenants. It is not responsible for the Parliament to legislate for the end of homelessness without providing for the houses that are required to meet that need. Amendment 121 is intended to achieve that objective by providing land for those houses.

I thank Jim Mackinnon, the chief planner, for meeting me and East Lothian Council members and officials in the recess to discuss the issue. I share his hope that the reduction in the right-to-buy discount in the Housing (Scotland) Act 2001, when combined with the designation of sites for affordable rented houses under planning advice note 74, will help to meet the need for affordable rented housing in the longer term.

However, we must not ignore the plight of thousands of people who are trapped in unsatisfactory, inappropriate or unaffordable housing today. The problem is that there is no way of delivering affordable rented housing on land that has been released for housebuilding in current development plans.

To be blunt, almost all the potential housing sites around towns and villages in my constituency are owned or controlled by developers. They are hard-nosed businesses that are not interested in providing affordable houses—they want to maximise profits. East Lothian Council thought that it had an agreement with Persimmon Homes and Wilson Homes to provide a percentage of affordable units on a site between Cockenzie and Prestonpans, but the developers managed to wriggle out of that in the absence of a clear planning designation.

I am not altogether surprised that Homes for Scotland opposes amendment 121 on the ground that it would

"blight properties and polarise communities".

I am not too bothered about the risk of blighting a small percentage of property developers' assets, but I am very worried about the polarisation of communities in which binmen, care assistants and posties can no longer afford to live—that is happening in some of our constituencies.

East Lothian Council is ready and willing to use its new prudential borrowing authority to build the houses that my constituents need, but that cannot be done because of the prohibitive cost of land for building. We cannot build affordable houses on unaffordable sites.

We urgently require a mechanism to enable councils to meet the desperate need that exists. I accept that PAN 74 should address the problem in the next round of development plans, but my point is that we must find a way to enable planners to provide for the immediate need when they determine planning applications here and now.

Amendment 121 is intended to allow councils to designate sites for affordable housing to ensure that land is released promptly and at affordable prices. I offer it as one way of achieving a solution to the immediate crisis. I look to colleagues—in particular, to the minister—for an acknowledgement of the critical situation that exists in areas such as East Lothian. I appeal for an appropriate initiative that will enable councils immediately to meet the desperate need that exists. We cannot shirk that responsibility. I put it to the minister that if amendment 121 is technically defective—which back benchers' amendments usually are—the Executive has a duty to come back with an alternative solution to the crisis that exists in areas such as my constituency. I appeal for some help from committee colleagues.

I move amendment 121.

10:00

Donald Gorrie: Members will be pleased to hear that the underlying argument for amendments 162 and 188—which relates to the crisis in affordable housing in many areas—has been made eloquently by John Home Robertson. Amendment 121 is an interesting amendment that seeks to tackle the problem in one way. I have lodged two amendments that attempt to deal with other aspects of the same problem. There really is a problem, so I appeal to the minister to respond favourably to the general idea that is being advanced.

Amendment 162 would give a council a power that it could use—there would be no compulsion on it to do so—to designate the whole or parts of its area as an area in which a change in the status of a house from a permanently occupied house to a second home would require a change in the use of the building under planning law. The definition that I was advised to use is that if someone lives in a house for 26 or more weeks in a year, the house counts as their residence and if they live there for less than 26 weeks in a year, it is only a temporary place of residence—in other words, it is a second home rather than their permanent home.

I propose that councils should be able to decide to apply the rule that if a residence is to become a second home, a planning application for a change of use will be required. When a council considered such applications in the future, it would have to take account of the adverse effect that granting planning permission for a house to become a second home would have on the overall pool of accommodation for permanent residents to rent or purchase. It would have to weigh up whether such a change would have a serious effect and if it thought that it would do, it would presumably refuse the change of use application.

I seek to deal with an issue that exists only in certain areas, but there is a great concentration of second homes in some parts of the country, which has a serious effect on the availability of proper homes as opposed to second homes. I hope that the committee and the minister will think that the proposal in amendment 162 represents a useful way of approaching the problem.

Amendment 188 appears at the top of page 11 on the marshalled list. It lays down that a council may refuse to accept a planning application for a residential development of more than 25 houses if it does not think that a sufficient proportion of those houses will be made available as affordable housing. I presume that each council would have a target to meet on affordable housing—let us say that it thought that one quarter of the houses that were built in the area should be affordable. If a planning application proposed to make less than a quarter of the houses available as affordable housing, the council would be able to tell the developer to go away and change the application so that the target would be met. The measure would be another tool in the toolbox for councils in dealing with the lack of affordable housing. I hope that the committee will acknowledge the strong case that John Home Robertson made for tackling that issue and will accept that we have proposed two worthwhile ways of tackling aspects of it.

Christine Grahame: I am sympathetic to the amendments on affordable housing. The affordable housing issue arises not only in rural areas such as the Borders but in city centres and practically everywhere in Scotland. Unfortunately, I have issues that are examples of what John Home Robertson refers to as technical defects in back benchers' amendments. He talked about affordable rented housing, but that is not what amendment 121 says. Issues arise to do with the definitions in the amendments. We need flexibility on the matter. I therefore find amendment 188, in the name of Donald Gorrie, more acceptable. In fact, some councils have already implemented or are trying to implement such a measure. Scottish Borders Council already insists that 16 or 18 per cent of any development should be what it calls affordable houses. I am interested in what the minister has to say on that.

On amendment 162, on second homes, there is an issue with the definition of a temporary residence. The idea that if a house becomes a second home, that should be seen as a change of use is a grand one, but the definition is the problem again. The amendment states that a residence would be considered permanent

"if it is occupied by a household for 26 or more weeks in a year and as a temporary place of residence if it is so occupied for less than 26 weeks in a year."

What about a person who is compelled by their employment to work abroad and who is not in occupancy for 26 weeks? They would find their house redesignated as a second home. Similarly, if a person was ill and did not live in their house for a long time, technically, under the definition, their home would become liable to be defined as a second home. Those concerns may be silly or slight, but if we are to put such measures into legislation, we must ensure that they will work and cannot be too easily challenged in court.

Scott Barrie (Dunfermline West) (Lab): No one doubts John Home Robertson's commitment to the case for affordable housing, which he has made on several occasions. However, like Christine Grahame, I find the definition in proposed new subsection (3B) of section 26 of the Town and Country Planning (Scotland) Act 1997 rather lacking. We need a better definition of what we mean by affordable housing. It must be much wider than the definition

"housing of reasonable quality that is affordable to people on modest incomes."

If we are to introduce such a measure, we must be clear about what we mean by affordable housing. The committee has discussed affordable housing on several occasions and discovered that the term means different things to people in different areas. We must be clear about what we mean.

Some, if not all, local authorities are grappling with the issue that is raised in amendment 188. Any local authority that is worth its salt will try to extract affordable housing from new developments. However, it is not enough just to say that we want part of all new developments to be affordable housing. To my mind, it should be difficult to tell what is affordable housing and what is not affordable housing in developments. I do not want ghettos to be created in new developments, so we must be careful about how we go down the route that Donald Gorrie suggests. No committee member disagrees with the intention behind amendment 188, but the means by which we achieve the aim is crucial. We should not rush into doing something just for the sake of doing it, without ensuring that it will work and will deliver what we want it to deliver. We need to get the type of housing that we want and not a two-tier housing system, which we would be in danger of creating if we followed some of what has been suggested.

Patrick Harvie: I agree strongly with John Home Robertson that the Parliament should not have legislated to end homelessness without making resources available to build the homes that are required to achieve that objective. However, I disagree with his opposition to the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004, because we should be doing both: legislating to end homelessness and making the resources available to build the homes that are needed.

I sympathise with what John Home Robertson is trying to do, although the approach that I would take to the problem is different from the one that he, the Executive or the majority of committee members would take. I might want to end the sell-off of social rented housing under the right to buy, or use mechanisms such as a land value tax, which gives local authorities greater flexibility in how they use land and bring land into use. In the absence of any strong support for such measures at the moment, I am tempted to support amendment 121. I ask John Home Robertson in summing up to say whether Scott Barrie's concerns about amendment 188 also apply to amendment 121. By allocating land specifically for affordable housing, we would almost be writing into legislation that we will no longer have mixed communities. I am concerned about that and seek John Home Robertson's answer on the point.

For a number of years, I have argued that planning permission for a change of use should be required if it is proposed to use a house as a second home, because when that happens the possibility is removed of the house being used by someone who lives in the community and has roots there. I am happy to support amendment 162, in the name of Donald Gorrie, and if amendment 121 falls, I will also support him on amendment 188.

Tricia Marwick (Mid Scotland and Fife) (SNP): In the news today, we hear from Citizens Advice that 700,000 people in the United Kingdom are having difficulty in meeting their mortgage payments. Citizens Advice is highlighting the problems that young people in particular have in getting a house in the first place. Nowadays, many people are being forced to buy at a time when they can least afford to do so.

I have great sympathy for the amendments in the group. My colleague Fiona Hyslop, who is here today, has repeatedly said that we cannot pass homelessness legislation without putting the resources in place to back it up and that, since 1999, the Executive has not put enough money into housing. That refrain is one that I and other members have taken up.

As I said, I have great sympathy for the problem that members address in the amendments. Like Christine Grahame, I have difficulty in understanding the technicalities of what is meant by "affordable housing" and "housing of reasonable quality" in amendment 121, in the name of John Home Robertson. Most people would not necessarily know the meaning of the phrase that he uses "people on modest incomes". In amendment 162, Donald Gorrie includes the definition

"households of average or below average income",

which is a better one.

By now, it must be clear to ministers that each member of the committee, whatever their party, has serious concerns about the lack of affordable housing in Scotland. If the minister is not minded to accept the amendments, will she give an undertaking that, before stage 3, the Executive will look carefully at how the bill could assist local authorities and others in their provision of affordable accommodation?

If amendment 121 cannot be accepted on technical grounds and amendments 162 and 188 are also not acceptable, will the minister commit to bringing forward proposals that will address the housing crisis in the immediate future and give hope to the many thousands of people in Scotland who are struggling to find a home of their own, whether it is to rent or to buy?

10:15

Sarah Boyack (Edinburgh Central) (Lab): I support John Home Robertson in raising this issue, which he and other members have raised in the chamber on several occasions. I can read the runes when I hear comments about defectively worded amendments and asking the minister to come back at stage 3, but I think that John Home Robertson has raised an important point. Over the past few years, much has been done to give local authorities more options on affordable housing. The homestake shared equity scheme was a radical idea and the Executive has made increased funding available to housing associations. It has also given its support to the use of affordable housing quotas in mainstream housing developments.

There is an issue buried in amendment 121 that is worthy of consideration. It is about the way in which a designation in a local plan shapes the value of the land. The issue that has come up time and again in my constituency is that developers will buy sites in expectation of the financial profit margin that they can achieve, and it is difficult for a local authority to second-guess that margin. It is possible to set quotas. We do not have the problem of ghettos of affordable housing; the problem is almost the other way round, because it is difficult to get affordable housing into mainstream housing developments, partly because of the economics of the situation. More options have been put on the table for local authorities, but the fundamental fact is that many of the problems are to do with the economics of a site. That is the issue that John Home Robertson raised in his opening comments and it is something that we should consider.

There is a specific issue for the public sector as well. Even when a housing association wants to get involved and wants to buy a site, the price is usually prohibitive. Some more modest sites may not look huge, but they are vastly expensive and are therefore unaffordable for public sector purchase. Also, when a public sector body is selling land for housing, it has to go with the market rate. Councils are advised of the market rate by the district valuer, which makes it really hard to put affordable housing in place. John Home Robertson has raised an important issue about the value of land.

The other part of the process is the amount of community benefit that local authorities have to get out of any new planning development, so we are looking for affordable housing or contributions to schools. One option could be to have housing that is identified and categorised as affordable, to change the economics of land values, both for local authorities or public sector organisations that are selling land for housing and for developers who want to buy land. Amendment 121 has identified a problem and it would be good if the minister could come back to the committee and the Parliament at a future date to address the issue.

A stage 2 discussion is the right place to raise this issue, which was highlighted by quite a few organisations in the evidence that the committee took at stage 1. I am not sure that there are enough options in the toolbox for planning authorities yet, but amendment 121 would be one of them.

Pauline McNeill (Glasgow Kelvin) (Lab): I want to say a few words about amendment 121, particularly in relation to houses for rent. There is a severe shortage of houses for rent in some areas and an oversupply in others. In my constituency, in the west end of Glasgow, there is a severe shortage. As John Home Robertson has said, there are huge waiting lists of families who are living in overcrowded conditions. We have difficulties even in placing women who have been subjected to domestic abuse in a house in an area where they want to live. There is no doubt that that is an issue in the west end of Glasgow, but the market value of land there is so hugely attractive that it is difficult to prevent the market from dictating what kind of housing we have there.

I take Scott Barrie's point that one person's definition of affordable housing may not accord with another person's definition, but I assure members that some of the types of property that have been built in the west end of Glasgow, dictated by the market, are not affordable for the vast majority of people who are on the housing waiting list. Amendment 121 goes some of the way to assisting in the debate about ensuring that there is a duty on affordable housing in legislation,

but I do not think that it goes far enough. Mixed housing is probably the best way forward, but what John Home Robertson is proposing is an important step.

I am sure that the committee has discussed the whole issue of whether quotas could be used as a way forward, but nonetheless there should be some catalyst in the bill to allow local authorities to engage, or to give them a duty to engage, with developers to ensure that a mix of housing is available to all people in all areas. If amendment 121 is accepted by the committee today, I hope that we will be able to refine at stage 3 the idea of what we are trying to achieve for affordable housing in the private and rented sectors.

Jackie Baillie (Dumbarton) (Lab): Like Sarah Boyack and Pauline McNeill, I think that there is much merit in John Home Robertson's amendment 121, particularly with regard to land supply and the value of land. However, having listened to the debate, I feel that I need to respond to the points that members other than John Home Robertson made about homelessness. During the debate in the chamber, it was said that the Executive's homelessness strategy and legislation are not just about bricks and mortar but about prevention. There was an explicit recognition that the number of homelessness applications being made—in Glasgow one applicant applied 13 times in one year—was not a bricks-and-mortar issue and that an underlying problem had to be addressed. The thrust of the Executive's strategy, which I am sure the minister will deal with, is to address the underlying causes of homelessness and spare people the cost of being homeless—we know that there is a human cost. We need to put all that in perspective.

I acknowledge that substantial funds have been made available for new build housing and improving properties. Nevertheless, we face the problem, which John Home Robertson quite rightly points out, that the nature of households is changing. More lone people who are heading up households require property, which causes acute pressure in certain areas of Scotland, of which East Lothian is a classic example.

I have considerable sympathy with amendment 121 and acknowledge John Home Robertson's problem. The situation is not necessarily the same throughout Scotland. We need more affordable housing, but I would not want some local authorities to use it inappropriately. Scott Barrie's suggestion that we define absolutely affordable housing and say how that definition would be applied is essential to amendment 121 proceeding.

Johann Lamont: I will attempt to respond to the debate and then set out all the caveats about challenges to the amendment and our coming back at stage 3. Those are legitimate points to make, but they are not the substance of the argument that I will make in relation to the amendments.

First, there is an issue about housing policy. Parliament has taken seriously housing policy and its significance for Scotland's development. As a former convener of the Communities Committee, I know that it has dealt with a great deal of housing and homelessness legislation.

Significant investment is being made—it is not the case that political decisions were not taken to invest in housing. We have chosen to invest in housing, but we should not assume that the money will always be there, because it follows and tracks political decisions. Our decision to invest in housing shows our commitment to it.

There are issues with the challenge of creating mixed communities, which is why our homelessness policy has to be considered in the context of our broader housing policy. In implementing our homelessness policy, we still want to have mixed communities; the guidance is clear that local authorities are able to provide for that.

Jackie Baillie is absolutely right that homelessness policy is not just about bricks and mortar. To assess investment in homelessness only by looking at the budget line on what we are spending on housing is to misunderstand the problem. I do not want us to end up being unable to direct money towards supporting people who, even if they got a tenancy, would not be able to sustain it, because our doing so was somehow not investing in homelessness.

There is close monitoring of our homelessness policy and I am always alive to the issues as they emerge locally. Such issues emerge in different ways in different communities. That is why we have addressed the issue of affordable housing and introduced the homestake initiative, which is important.

Tricia Marwick talked about people being forced to buy. We also have to acknowledge the increased number of people who choose to buy and see their housing as an investment. That has consequences for the way in which people view the housing market.

Scott Barrie said that he did not want ghetto areas to be established. I argue that it is not so much ghettos of affordable housing but a different kind of ghetto that we do not want in strong communities. The view that the only people who should live in a particular area are those who can afford a house above a certain amount creates a different kind of ghetto, which does not create social cohesion.

On tackling homelessness, investment and our work on regenerating areas, someone said on the radio this morning that, as a result of investment from the public purse and private sector, people are choosing to live in areas they would not have considered previously and that the houses there are more affordable. The problem is that such houses become unaffordable, because of the drivers in the hotspots to which John Home Robertson referred.

Our commitment on community ownership has been to regenerate communities. Instead of people wanting to move out of an area because living there is intolerable, we should have safe communities, in which the problems that put people on to waiting lists have been solved. Those comments are intended to put into context the challenges that exist. I do not underestimate in any way the strength of feeling in the committee on the issue of affordable housing, which must be addressed.

Amendment 121 would require that where an area of land or a building has been designated for affordable housing, a proposal to use that land or building for any other purpose would constitute development and would therefore require planning permission. The amendment also specifies that in this context, affordable housing means

"housing of reasonable quality that is affordable to people on modest incomes."

John Home Robertson will be delighted to hear—and probably knows already—that that is the broad definition that is set out in Scottish planning policy 3, "Planning for Housing". For that reason, I do not think that the argument of technical deficiency necessarily applies.

I acknowledge the concerns that exist regarding the lack of affordable housing in parts of Scotland, not least in East Lothian. Those concerns have been forcefully highlighted by John Home Robertson. I also recognise the desire to find an effective and practical way to prevent suitable land from being used for other purposes. Last year we published planning advice note 74, on planning and affordable housing, which outlines ways in which the planning system can support the delivery of affordable housing. A number of planning authorities, including East Lothian Council, have responded positively to the advice, but there is a time lag between the creation of a supportive national and local framework and the construction of affordable homes. John Home Robertson has highlighted that issue. From discussions that he has had over the summer with my officials and with members and officials in East Lothian, I know that he recognises the problem. When he lured me to Dunbar—where some really good work is being done—to see an example of how a town centre can be regenerated, he did not miss the opportunity to raise the issue again.

Malcolm Chisholm takes the issue of affordable housing extremely seriously. As the Minister for Communities, he has established a working group to consider options for accelerating the delivery of affordable housing. The group has met once and another meeting is planned. I am sure that some practical ways forward will come out of its work.

The introduction of a separate use class for affordable housing has been identified as one potential way forward. We have commissioned independent research into that and I will ensure that its results are made available to the committee. We are very willing to consider the way forward in the light of the research findings. Should there be a clear case for the introduction of a separate use class for affordable housing, that could be introduced, following consultation, through secondary legislation rather than through the Planning etc (Scotland) Bill. I therefore ask John Home Robertson to withdraw amendment 121. I reiterate to Tricia Marwick that Malcolm Chisholm and I are open to introducing measures that will work. Any such measures must be tested for workability. For that reason, I urge members not to support the amendment.

Amendment 162, in the name of Donald Gorrie, requires that where a property that has been in use as a permanent home is changed to use as a temporary residence, that should be regarded as constituting a material change of use that requires planning permission. I seek clarification of the point from Donald Gorrie, but I understand that if someone was not living in their home for 26 weeks and had to seek planning permission to change it to a temporary residence, the planning authority would have to take account of its affordable housing policy and could refuse that change of use. If it did, where would that leave the person who was living in the house for fewer than 26 weeks of the year? I am not sure where the amendment would take us. It specifies that use as a temporary place of residence would be defined as its being in occupation for less than 26 weeks a year. Examples of people who are not in their home for 26 weeks a year but whose residence could still reasonably be defined as their permanent home have already been highlighted.

Amendment 162 also requires that where permission is sought to change the use of a property from permanent occupation to temporary occupation, the planning authority's decision should take account of whether any shortage of affordable housing provision in the local area would be aggravated by the change of use of the property. As I have said, I take seriously the issue of affordable housing provision in Scotland, including the specific issues that are faced by rural

areas, where I presume the amendment would have most effect. The issue of second homes and holiday lets and their impact on provision of affordable housing is not straightforward. The income that such temporary accommodation brings in can be vital to the sustainability of many permanent rural communities that are dependent on the tourism industry.

The provision of powers to local authorities to vary the rate of council tax on second homes provides a valuable additional source of revenue to support the affordable housing supply. There are some fundamental practical difficulties with defining a property by how long it is occupied and by whom, including families that have a long term connection to an area. At a time when we are seeking to streamline and simplify the planning system, I am not convinced that the monitoring and enforcement that would be required by amendment 162 in relation to permanent and temporary occupation could be achieved effectively. We do not consider that amendment 162 will make material net improvement to the planning system or to the provision of affordable housing. I therefore ask the committee to reject it.

10:30

Amendment 188 would allow planning authorities to refuse even to consider an application for more than 25 residences, where the proportion of residences that were designated for affordable housing fell below a target that was specified by the planning authority. The key issue for planning authorities is whether a proposal complies with the development plan. Planning advice note 74 advises planning authorities to set a target for the percentage of affordable housing within residential developments in an adopted policy, preferably the statutory development plan. Such a policy should then be applied consistently to relevant planning applications. It would be a material consideration in determination on a planning application, as opposed to being a reason why an application would not even get to the stage of being considered. In short, this is a matter of compliance with the development plan that should be considered in the course of determination on a planning application. It should not be used as a ground for refusing even to consider an application. I urge the committee to reject amendment 188.

I recognise the challenges of our housing policy and all the demands upon it, and I am more than happy to give assurances that we will work further on the suggestions that have been flagged up in the committee and through the affordable housing working group, and that we will address the issues that have been highlighted by John Home Robertson and others.

John Home Robertson: We have made significant progress in the debate and I am grateful to all the members who have taken part. There has been general acknowledgement that there is a significant problem in many parts of Scotland and a crisis in some parts of Scotland, including my constituency. I am grateful to colleagues who have brought the benefit of their constituency experience to bear on the debate, and in particular to the minister. She concentrated a lot on homelessness—rightly, because that is the most extreme manifestation of the problem. However, I stress that we need to be aware of what I describe as virtual homelessness: for example, the pensioner who is stuck in an upstairs flat without any hope of getting a transfer to ground-floor accommodation because of limited turnover of housing stock, and what little turnover there is has to go to people who are statutorily homeless or, perhaps more acutely, the young family who are having to squat in their in-laws' front room. If that had happened to me in my early married life, I suspect that murder would have been committed.

Jackie Baillie: By them, too.

John Home Robertson: It is not funny. Many of our constituents have to live in such circumstances, which I describe as near homelessness. That has been acknowledged around the table.

Colleagues have expressed specific concerns about how we go about addressing the issue of affordable housing, and specifically the risk of creating ghettos. I agree—it would be appalling if we were to repeat mistakes that were made in the past and to have a cheap street in some grotty corner of a new development. That is not the way to approach the problem. We should ensure that the houses that we are talking about are scattered around new developments. There is the matter of defining affordability. The minister rightly pointed out that the form of words has been fished out of Scottish planning policy 3, but I would go further and suggest that there should be a formula to establish a link between what is seen as affordable and the national minimum wage. Such a link would be relevant.

A lot of sympathy has been expressed about affordable housing, but I put it to colleagues that it is an issue in which we could debate the relative merits of different solutions until the cows come home. The trouble is that we are talking about people who have not got homes to come home to, if I can twist the language to that extent. I am grateful to the minister for her specific acknowledgement that affordable housing is an urgent issue. I welcome the fact that officials and ministers are actively addressing it and that the minister has not ruled out the possibility of secondary legislation, which could include a

distinct land-use class. I intend to keep up the pressure on the issue. It might be appropriate to return to it at stage 3, but I am grateful for what the minister has said, and to her officials, who have been engaged directly with local authorities and others on the issue.

I accept that there are technical deficiencies in amendment 121, but I think that we have made some progress during the debate. I hope that we can go on making progress. I repeat once again how urgent the matter is: it is not good enough to wait a few years, after which the effects of the amended right to buy under the Housing (Scotland) Act 2001, along with PAN 74, might bring some more affordable housing into the system. We cannot wait for that. Urgent action is needed in areas such as East Lothian. However, given the minister's assurances, I will be content to seek to withdraw amendment 121 with a view to returning to the subject again and again until we get it sorted out. I hope that that will be within months rather than years.

The Convener: Does any member object to amendment 121 being withdrawn?

Members: Yes.

The Convener: In that case, there will be a division on amendment 121.

FOR

Grahame, Christine (South of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Harvie, Patrick (Glasgow) (Green)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Home Robertson, John (East Lothian) (Lab)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 121 disagreed to.

The Convener: Amendment 129, in the name of John Home Robertson, is grouped with amendment 156.

John Home Robertson: Amendment 129 is intended to make high hedges that are close to the curtilage of other people's houses subject to the same sort of controls as apply to garden walls. There are appropriate controls over the height and construction of walls, but there are no limits to the inexorable growth of leylandii hedges. All constituency members will have experience of genuine grievances about people who refuse to maintain boundary hedges properly. The layout of modern housing and the availability of fast-growing hedge species have led to situations with genuinely serious problems with overhanging branches, encroaching roots and even the complete obstruction of daylight.

Let me say at this early stage—not only as a former minister with responsibility for forestry—that I like trees and I like well-maintained hedges. Apart from being attractive landscape features, they are tremendous habitats for wildlife and they help to absorb carbon dioxide. I would be the last person to advocate tree-free housing areas.

Mr Petrie's amendment 156, the other amendment in the group, seems to be a bit draconian. It would create a power to take action to remove any

"tree, shrub or plant … of more than two metres … on land owned or occupied by another person."

That would result in a right to make a formal application to a council for the removal of a sweetpea plant, a beanstalk or even a hollyhock in somebody else's garden—it would not necessarily even be the neighbour's garden. My proposals relate only to hedges over 2.5m high that are within 5m of the boundary of the immediate curtilage of a neighbour's house.

An overgrown hedge close to a neighbour's house can be an aggravating menace. That fact has been accepted for many years. In England, Parliament tried to address it using a phenomenally cumbersome 14 sections of the Anti-social Behaviour Act 2003. Here in Scotland, the then Deputy First Minister told Scott Barrie on 31 January 2001 that the Executive had

"decided in principle that a statutory remedy of last resort is required, involving … enforcement action in appropriate cases".—[*Official Report, Written Answers*, 31 January 2001; Vol 10, S1W-12936.]

Five years have passed, and nothing has yet been done. I pay tribute to Scott Barrie for his efforts to tackle the problem. However, the complexity and scale of the English legislation indicates that the issue is too big for a back-bench member's bill, and I doubt that a physical object such as a hedge can be defined under antisocial behaviour legislation. A massive hedge in a housing area would seem to be a development just as much as a wall or shed is, and could therefore be treated as a structure for planning purposes.

I appreciate that the responsibility is awkward and is likely to be shuffled between desks in different Executive departments from now until doomsday. However, the Deputy First Minister in 2001 stated the Executive's position, and I suggest that sooner or later some courageous minister is going to have to tell some evasive official to stop passing the buck. This minister is well known for her courage.

Christine Grahame: Flattery will get you everywhere.

The Convener: That is what he is hoping for.

John Home Robertson: This issue will not go away; it will carry on growing as inexorably as Cupressus leylandii and similar species. Most people have reasonably responsible neighbours, but some do not. Jim Wallace was therefore right to accept the need for a statutory remedy and for powers for enforcement action. He made that statement with the authority of the Scottish Executive, so people are entitled to expect the undertaking to be fulfilled.

I offer amendment 129 as a quick and relatively simple legislative device to address the problem—however reluctant planners may be to get involved in such issues. The Scottish Executive Environment and Rural Affairs Department has already used the bill as a convenient vehicle for a chunk of extraneous legislation on national scenic areas, so I hope that colleagues will forgive me for trying to insert a solution to another matter of genuine public concern.

I hope that the minister and my committee colleagues will consider my proposal positively. If the Executive is not able to accept amendment 129, I submit that it is incumbent on the minister to explain how the Executive intends to fulfil the undertaking that was made by the Deputy First Minister 67 months ago, on 31 January 2001.

I move amendment 129.

Dave Petrie: I refute what John Home Robertson said about my amendment 156. The thrust of the amendment is to tackle a serious social issue that the Executive has been aware of, as John rightly said, since 2001. There is cross-party acknowledgment of the seriousness of the problem but, as John says, no action has been taken in the past six years. I suggest that the Executive has been sitting on the hedge for far too long.

Immediate action is needed. People—particularly elderly people—have suffered a lot of distress not only over the past six years but for a long time before that. The Planning etc (Scotland) Bill is an ideal platform to promote legislation on the issue.

The Convention of Scottish Local Authorities fears that burdens will be put on local authorities by making them the policemen for hedges, in addition to all their other responsibilities. However, I want to give the committee some statistics. There is legislation in England at the moment and the threat of legislation here will inevitably lead to people taking appropriate action before a council has to intervene. That has been proved in South Tyneside, where only one case out of 40 required council intervention, and in Birmingham, where only nine cases out of 1,500 required council intervention. COSLA's fears are unfounded.

If the Executive will not accept amendment 156, I suggest that it is quite content that the current situation should continue. As I have said, the problem causes a lot of distress to a lot of people. If this opportunity is missed, it could take another six years for something to come on to the statute book. We cannot wait that long, so I want to move amendment 156.

The Convener: Mr Petrie, it is not appropriate for you to move your amendment at this point; you will be able to do so when we reach the appropriate point.

Scott Barrie: As people will know, I have taken an interest in this issue over the years. If the solution were as straightforward as Dave Petrie suggests, it would have been dealt with long before now. It appears to be straightforward, but once one starts to look into it, it becomes incredibly complicated. That is why there has been no legislation.

The use of any such legislation should not often be necessary—in the vast majority of cases even the threat of legislation should not be necessary, because people act as good neighbours. Problems arise only in the small minority of cases when people do not act as good neighbours. Everyone knows what the problems are—we need not go into them—but the difficulty lies in finding an adequate solution.

To a large extent, amendment 156 has been lifted from the Anti-social Behaviour Act 2003 south of the border. John Home Robertson was absolutely right to point out that we would be going much too far to say that any tree or bush—

10:45

John Home Robertson: Or plant.

Scott Barrie:—or plant over the height of 2m should be removed. If that proposal were accepted today, it would be in direct conflict with other parts of the legislation, particularly section 26(2), which deals with tree preservation orders. We have to be careful not to create legislation that faces two different ways at the same time, and that we do not seek to find a quick-fix solution to a difficult problem, albeit that it is one that could have been dealt with before now. I may take some responsibility for that.

Although amendment 129 in John Home Robertson's name is simple and straightforward, it does not say how we would police the proposed provision or where we would get the wherewithal to do so.

Dave Petrie acknowledged COSLA's concerns: our local authorities have justifiable concerns about the amount of extra responsibilities they could gain without extra financial resources. If we do not have a self-financing scheme—which would allow it to be policed—it is not incumbent on us to pass legislation that will create one. If we are going to do something to solve an obvious problem, we have to be clear that the solution is financially robust so that it can be dealt with.

That said, I intend, through the consultation that I am preparing, to examine whether we can achieve consensus about the problem so that we can develop robust legislation that will work. I say to anyone who thinks that it is easy to solve the problem that I have scars on my back from many years to show that whatever we do, it is utterly impossible to please all the people. If we can please some of the people, we might have achieved something. To my cost, I now know that the problem cannot be easily solved.

Christine Grahame: I have great sympathy for amendment 129, particularly as people try to enclose their much smaller gardens these days. John Home Robertson's point about legislation prohibiting walls over a certain height was interesting—people are creating green walls to evade prohibitive planning regulations on building walls. I would like to see movement on what the amendment proposes at stage 3.

Proposed new subsection 5C to be inserted into section 26 of the 1997 act, describes a hedge as

"a row of two or more shrubs or trees with overlapping or interlocking branches."

I would like the description of such a hedge to be something like "of wall-like appearance" because that is what we are talking about when we see such a solid mass of branches. My neighbours will be laughing at my involvement with the bill because I have so many things growing in my garden that they would have chopped down. They think that I have orang-utans in there.

Dave Petrie's amendment 156 is far too broad. A high hedge is not a tree; a tree is a tree and that is that. In urban areas—I think of my terraced townhouse—mature trees are terribly important and people buy houses knowing that such trees are attached. I get cross when people apply to chop down mature trees when they bought the house knowing that the trees were there. Such trees form a habitat for wildlife and they are good at gobbling up CO_2, much of which is probably produced by MSPs. I am quite serious that the amendment is too sweeping.

There has to be a solution. Perhaps John Home Robertson or the minister will proceed with an amendment at stage 3 and include in the description the words "of wall-like appearance" so that we would know what we were dealing with. It would not be difficult for courts or mediators to then say, "We know a high hedge that is acting like a wall when we see one, just as we know an elephant when we see one, and we know when a high hedge is not acting like a wall." I accept what Scott Barrie says about such situations being complex, but we all know what such a hedge looks like when we see it. If we know that, it is not beyond our wit to define it.

Euan Robson (Roxburgh and Berwickshire) (LD): Like many members, I have had constituency problems with high hedges. It is a difficult question, and I recall that there were about 1,300 responses to the Executive's consultation in 2000-01, all of which called for action. Action is definitely necessary.

Amendments 129 and 156 are both valiant attempts. Amendment 156, in Dave Petrie's name, goes too far and has some strange definitional problems. For example, his proposed new section 178B(2)(a) of the Town and Country Planning (Scotland) Act 1997 refers to circumstances in which

"action is necessary for the prevention or abatement of… structural damage to a building".

If a hedge is causing structural damage to a building, how can that be abated? I do not understand the concept. It can be prevented, but I do not understand how it can be allowed to proceed at a slower rate. However, the amendment is a valiant attempt to address what is a serious problem.

Of the two, amendment 129, in the name of John Home Robertson, is preferable. We can argue about the height level of 2.5m, although it is probably about right. However, there is a definitional problem in proposed new subsection (5C), which would be inserted by amendment 129 into section 26 of the 1997 act. The proposed new subsection says that

"a 'hedge' means a row of two or more shrubs or trees with overlapping or interlocking branches".

I do not think that two shrubs or trees constitute a hedge. If they do, and the amendment is agreed to, you will have to excuse me, convener, as I will have to go home and take the saw to something in my garden. The wording could cover two seedlings that sprout and have interlocking branches but cause no particular difficulty.

However, the bill is an appropriate vehicle with which to begin to address the issue. As I said, there are obvious definitional problems with both amendments, but I hope that it might be possible to return at stage 3 with a proposal that begins to turn the tide. There is no doubt that high hedges are causing considerable difficulty and blighting people's lives in several parts of Scotland. It is

incumbent on the Parliament to do something to address the problem soon.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I want to make a small point. Members have all given examples of how their constituency casework has increasingly been laden with complaints regarding high hedges. We hoped that Scott Barrie would be our saviour in introducing a member's bill, but we believe him when he talks of the scars that he has from trying to make progress.

Notwithstanding Scott Barrie's comments that he intends to continue his work, the bill gives us an opportunity to deal with the matter, and John Home Robertson made a fair comparison between the amendments and the national scenic area provisions that are to be included in the bill.

Although we have highlighted some of the flaws in amendments 129 and 156, none of us has come up with anything better. I would hope that, between now and stage 3, the minister and the Scottish Executive could use their collective wisdom to draft an amendment that will protect the people in our constituencies. As always, it is a minority who behave unacceptably, but I have seen horrendous examples of people's quality of life in their own home being greatly reduced because of their neighbour's inconsiderate inaction in failing to maintain their hedge-cum-green-growing wall in a reasonable state.

The Convener: Minister, I ask you to exhibit some of that wisdom and respond to the points that have been raised.

Johann Lamont: No great challenge there, then—I have to be courageous, show collective wisdom and find an evasive official. On the last one, I am in an unfortunate position, as there is no such beast in the planning division. Therefore, I am presented with an even greater challenge.

I do not underestimate the importance of the problem. Since I became an MSP, the capacity of people to be horrible to, intimidate and bully their neighbours has continued to amaze me. The fact that people are prepared to use hedges and trees in that way, as has been well rehearsed by other members, says something about the nature of our society and need for us to challenge such behaviours. I take the issue seriously. I recognise people's experience of it and appreciate the fact that they have taken the time to contact me to highlight their concerns. I emphasise that we agree that this is a serious problem.

This is not about not wanting trees or having a problem with them. As someone whose family comes from the island of Tiree, I argue that possibly the most beautiful landscape in Scotland is one without trees, but that does not necessarily mean that we should aspire to that. There is no doubt that it is a separate matter when trees are used in the way that has been described by some of the people who have written to me. It is not about the growth of trees, which is merely the weapon of choice, but about behaviour.

Amendment 129 would require planning permission for hedges over 2.5m in height within 5m of the boundary of a dwelling-house. As I have said, we recognise the significant adverse impact that some high hedges can have, where they overshadow neighbouring land and affect individuals' enjoyment of their property. The Executive's Justice Department consulted on the issue of high hedges in 2000 and found that legislation, in the form of a statutory remedy of last resort, is required to tackle high hedges in gardens that create a significant nuisance to neighbours. The Executive has indicated that that could be achieved via Scott Barrie's proposed member's bill on high hedges. It reflects the approach that was followed in England and Wales, where the Anti-social Behaviour Act 2003 introduced powers of last resort to allow local authorities to adjudicate in cases of high hedge nuisance.

Notwithstanding the scars on Scott Barrie's back, he has indicated that he will continue to consult on the matter, which I welcome. Through that consultation, we will be able to establish effective solutions. We continue to support legislation by that route, following the English model, rather than through the Planning etc (Scotland) Bill, as Cathie Craigie has requested. This is a nuisance issue, rather than a land use planning issue. In other words, the problem arises when a neighbour is unresponsive to requests to cut back a high hedge.

In contrast, the planning system deals with the regulation of new development. The Planning etc (Scotland) Bill seeks to strengthen the powers that are available to local authorities to prevent damage to trees through development. Bringing hedges into the definition of development would mean that a planning application would have to be submitted for all hedges over 2.5m in height, which is an unnecessary and excessively bureaucratic step. It would also significantly increase the workload of planning authorities.

In addition, amendment 129, as drafted, would cover

"two or more … trees with overlapping or interlocking branches."

The number of trees and hedges that would be covered by the provision would, therefore, be vast and disproportionate to the issue.

As is noted in the Justice Department's consultation paper on high hedges, the Executive does not want to restrict the planting or growth of hedges or trees, which in most cases are

beneficial and do not impact adversely on neighbouring properties. Although I support alternative provisions to deal with high hedges as a nuisance issue, I do not support their treatment as a planning issue and recommend that the committee rejects amendment 129.

Amendment 156 would give planning authorities powers to mediate and serve notices detailing action to be taken where there is a dispute over a high hedge, tree or shrub. The provisions are similar in nature to those in England, where high hedge controls are included in the Anti-social Behaviour Act 2003. However, there are important omissions from the English provisions, including the right to appeal or to vary the notice served, the right of the authority to set fees for the new procedure and conditions on the action that can be specified in the notice. The inclusion of high hedges in the English legislation emphasises the point that the problem is essentially a nuisance issue, rather than a planning issue. Although the Executive supports the principle of a statutory remedy for high hedge disputes, it believes that that should be provided through separate legislation, rather than through the Planning etc (Scotland) Bill. That would allow for detailed consideration of the full suite of provisions that are required, ensuring that important issues such as fees and appeals are examined properly. Scott Barrie has flagged up those issues.

As I mentioned earlier, Scott Barrie has said that in the next few weeks he will publish a new consultation on his proposed high hedges bill. I commend that approach as the most effective way of dealing with the issue. In light of the forthcoming consultation, I ask the committee to reject amendment 156. I reassure David Petrie that we are not putting the issue to one side in the hope that something may appear in another six years. There is an active process in which we can engage to deal with an issue that is significant for some people throughout Scotland.

11:00

John Home Robertson: I am having a busy morning and I apologise for detaining the committee on a couple of different issues that are both important in their own way.

I am grateful for the minister's reply and I was interested in what she said on the case for tackling the issue through antisocial behaviour legislation. That probably raises the question why Jim Wallace did not follow through on the undertaking that he gave as Minister for Justice to steer the matter through antisocial behaviour legislation. I will leave that sticking to the wall.

Christine Grahame: Sticking to the wall?

John Home Robertson: All right—sticking to the hedge.

I have got the message that planners will not touch the issue with a bargepole; that has been fairly clear for some time. I am not sure about Christine Grahame's concern about the need for a direct comparison with walls; we are talking about hedges. I take Euan Robson's point about the definition of a hedge—to call just two trees with interlocking branches a hedge might be a bit excessive; perhaps the number should be three, four or more. However, we know what we are talking about. Committee members of all parties have acknowledged that high hedges are a genuine problem that needs to be addressed.

I particularly welcome Scott Barrie's offer to return to the fray, despite the scars to which he referred. Combined with the minister's undertaking that the Executive wants to address the matter urgently, that is a clear signal that the Parliament intends to speed the process and to deal with the matter without further delay.

I urge members not to press the amendments to a vote, because it would be a pity to dispose of the issue through amendments that we all know are defective. It would be more appropriate to leave the issue open, on the clear understanding that Scott Barrie and ministers intend to take it up urgently and to resolve it with minimum delay. On that basis, I am content to withdraw amendment 129.

The Convener: Mr Home Robertson seeks to withdraw amendment 129. Does anyone object?

Dave Petrie: I object.

John Home Robertson: Why? That is idiotic.

The Convener: The question is, that amendment 129 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Petrie, Dave (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, John (East Lothian) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 129 disagreed to.

The Convener: John Farquhar Munro has said that, as amendment 177 is a consequential amendment, he does not wish to move it.

Amendment 177 not moved.

Section 3 agreed to.

The Convener: This is an appropriate point for a short comfort break.

11:03

Meeting suspended.

11:16

On resuming—

After section 3

Amendment 162 moved—[Donald Gorrie].

The Convener: The question is, that amendment 162 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 162 disagreed to.

Section 4—Hierarchy of developments for purposes of development management etc

The Convener: Amendment 178, in the name of Patrick Harvie, is in a group on its own.

Patrick Harvie: One of the few aspects of the bill on which we have all consistently agreed is the idea of a hierarchy of developments. Nobody disagrees that the hierarchy will be a good thing and makes a lot of sense. However, the bill will give ministers the power to specify that specific developments should be treated as though they are in a different category in the hierarchy from the one to which they are originally assigned. Amendment 178 would delete that power. I propose that not simply because I do not want ministers to have the power, but because I am not yet clear about the circumstances in which they intend to use it and how it is intended to function. We all want the new planning system to give people clarity, so it would be helpful if clarity could be given about what the power is for and the kind of situations in which it might be used. I will not necessarily press amendment 178, but I would appreciate a little more information about what ministers see as the purpose of the power and when they envisage using it.

I move amendment 178.

Christine Grahame: I will be extremely brief. I share Patrick Harvie's concerns and look forward to hearing the minister's explanation.

Johann Lamont: Proposed new section 26A of the 1997 act will enable regulations to be prepared that describe classes of major and local developments. Proposed new section 26A(3) will give ministers a direction-making power to require particular developments to be treated as if they were in a different category. If the characteristics of a local development demanded that it be processed as a major one, ministers could direct that that should happen, with the enhanced scrutiny and engagement that that would bring. The direction-making power will apply to applications for local and major developments only and not to national developments. The deletion of proposed new section 26A(3) by amendment 178 would remove any flexibility to respond on a case-by-case basis to the characteristics of individual proposals.

One example that has been given to me of when the power might be used is in the case of a proposal to develop a single home with access on to a trunk road. We might argue that that required enhanced scrutiny and should be moved from the local development category to the major development one. The power seeks to safeguard ministers' flexibility. I have resisted in the past those who wish to increase ministers' powers in determining planning applications but, in this case, I argue that the power is an important safeguard that would be used in the kind of case that I have mentioned, in which a development seems local but would have a more significant impact. In such cases, we would be keen for enhanced scrutiny to take place. On that basis, I recommend that amendment 178 be rejected.

Patrick Harvie: I appreciate the minister putting her comments on the record. I still feel that it might be worth having a little more information at some point, so I might return to the matter at stage 3 in some manner. However, for the moment I ask to withdraw the amendment.

Amendment 178, by agreement, withdrawn.

Section 4 agreed to.

Section 5—Initiation and completion of development

The Convener: Amendment 139, in the name of the minister, is grouped with amendments 140 and 141.

Johann Lamont: The bill will introduce a requirement for a developer to notify the relevant planning authority of the date on which a development will commence. Amendment 139 seeks to allow ministers to specify, through regulations, further information to be included in the notification of initiation of development, or start notice. For example, developers could be required to inform the planning authority of any previous enforcement action taken against them.

As part of our proposals to modernise the planning system, we are committed to encouraging proactive enforcement to deal with breaches of planning control quickly and efficiently. Requiring developers to notify the planning authority when development of a site starts will enable authorities actively to monitor the progress of the development and to identify breaches of planning control as they arise, saving time and resources for both the authority and the developer. Clearly, using a start notice to collect further relevant information about the developer and the development will assist the planning authority in decisions regarding the appropriate allocation of resources to the monitoring of specific developments. The detail of what further information should be included and submitted to the authority will be set out in detail in subsequent secondary legislation.

In the stage 1 report, the Communities Committee made a recommendation—number 104—that the Executive should

"consider the introduction of … innovative methods, such as the display of … notices on development sites … to increase public awareness of … developments".

The committee convener, Karen Whitefield, made further reference to that in the stage 1 debate. The Executive is grateful to Karen Whitefield and to the committee for that valuable suggestion.

In response to the recommendation and, of course, to Karen Whitefield's comments, we have lodged amendments 140 and 141, which will require developers undertaking certain types of development to display, on-site, certain information regarding the development. The exact information to be displayed will be set out in regulations, but it is our intention that it would include information relating to the granting of planning permission and details of any conditions that apply or, when there are a significant number of conditions—as may frequently be the case for major developments—details of how a list of conditions can be obtained. It would also include contact details for the planning authority enforcement branch, enabling members of the public to report any concerns that development was not being carried out in accordance with the planning consent or conditions.

The Scottish Executive is committed to reforming the planning system to make it more inclusive and transparent and to building trust between developers and the local community. We are also committed to promoting a more proactive approach to planning enforcement, with an emphasis on the early identification and correction of planning breaches. We believe that the introduction of on-site notices providing information on the development of the site and advice to the public on reporting perceived breaches of planning control will be an extremely useful measure in addressing both those commitments. The display of on-site notices will encourage developers to provide information to the general public on what work is being undertaken on the site. By raising public awareness of the role of the planning system, what has been permitted and how development is monitored and controlled, we will encourage greater public confidence in the system.

While we are confident that the vast majority of developers will comply with any requirement to display notices, it is important that, when a developer does not meet their obligations under the planning legislation, planning authorities have powers to ensure compliance. By making it a breach of planning control not to display a site notice when required to do so, amendment 141 will enable the relevant planning authority to undertake appropriate enforcement action to correct the breach.

The amendments are very much in line with the committee's thinking, especially as articulated by the convener, in relation to enforcement and providing people with information so that they can challenge perceived breaches. I ask the committee to support the three amendments.

I move amendment 139.

The Convener: I am delighted to learn that the Executive has paid such close attention to the suggestion that I made at stage 1 both in committee—where I was grateful for the support of other members—and in the debate. This is a positive step that will make a considerable difference to the ability of communities to know easily what regulations apply to developments, especially as enforcement is often of key importance in the planning process. I am delighted that the Executive has responded to my concerns and those of colleagues on the committee.

Tricia Marwick: The form of the notice that will be required by proposed new subsection 27C(2) of

the 1997 act will be prescribed "by regulations". I welcome that. I would like to tease out from the minister in advance of the regulations the kind of things that she intends to insert in the notice. For example, will it indicate whom people should contact in the event of a breach, the hours of work of construction on the site and where people can examine the code of construction practice? We would all like the notice to include a number of pieces of information.

Johann Lamont: It has been suggested that we have collective wisdom and that I am courageous. Any person who did not pay attention to the convener when she says something would be very foolish. I may be courageous, but that would be a step too far. I am pleased that she welcomes what we have done in this area.

I indicated that we anticipate that the information will include details of any conditions that apply or, if it is a major development and there is a series of conditions, an indication of where that list of conditions can be obtained. Critically, the information would include contact details for the planning authority enforcement branch. Sometimes people have a feeling of helplessness in the face of development. If it is indicated on site where people should go if they have a problem with a development and enforcement is taken seriously by the planning authority and is appropriately resourced, that creates a virtuous circle. Such an approach both addresses individual concerns and creates a culture change, as it concentrates the minds of developers who might be inclined to breach conditions. As the regulations progress, we are open to suggestions on how they should look. We are keen to take advice on that matter.

There is a balance to be struck. Notices must be readable and accessible and must make sense. They should not be so densely written that no one will pay attention to them. The critical point is that there should be a connection between people getting contact information and getting an appropriate response from the planning authority when it is contacted. That challenges the idea that people are helpless in the face of development. Something as simple as giving people appropriate information that they can use appropriately sends out a positive message.

Amendment 139 agreed to.

Amendments 140 and 141 moved—[Johann Lamont]—and agreed to.

Section 5, as amended, agreed to.

Section 6—Applications for planning permission and certain consents

11:30

The Convener: Amendment 179, in the name of Scott Barrie, is grouped with amendments 180 and 181.

Scott Barrie: A key feature of the planning white paper was a commitment to quality in planning outcomes. I am sure that my constituency is not the only one where the design quality of new properties is at best questionable. My amendments would go a long way towards addressing the issue and reversing what has perhaps become a trend in some areas. They would ensure that planning authorities improved the design of new-build housing by including a commitment to quality outcomes in the bill rather than leaving it to policy and practice guidance.

The bill already contains provisions for pre-design discussion. Including design in the scope of the considerations at an early stage would go some way to achieving better policies on both architecture and design. My amendments would do that.

I move amendment 179.

Christine Grahame: I am not unsympathetic to Scott Barrie's proposal. I do not think that it is appropriate for the bill, but I have mentioned Legoland houses before and, driving around the countryside, I despair at the same kind of standard, modern houses that are being built. They are completely unsympathetic to the landscape and are apparently not being built from materials that weather and become sympathetic through time.

We have an obligation to future generations. I understand why people buy those houses—they often have no option—but I am concerned that wherever I go in Scotland, the same kind of housing has been built. It does not matter where I am. I see standard, Legoland housing that is not sympathetic to the environment. It will be a blight on generations to come. We have many good old buildings now, as even in the 1950s we built more sympathetically than we do now.

I have sympathy with Scott Barrie's amendments, but I do not think that the bill is the appropriate place for them.

John Home Robertson: I am with Scott Barrie on this one. I think that I referred to Persimmon Homes earlier, and I will do so again. It is awfully depressing to see houses of identical design being built on the edge of communities in every town and village in the United Kingdom. It puts me in mind of travelling in the former Soviet Union and communist empire, where I saw identical blocks of

flats being built everywhere from Mongolia to Yugoslavia. That private enterprise should be replicating that environment in the UK is acutely depressing. Scott Barrie is on the right track.

Johann Lamont: My visit to Dunbar did not feel like a visit to the Soviet Union. It is overstating the case a little to say that new developments are like state-provided housing duplicated across the nation. However, I recognise the points that have been made, and there is possibly a connection to affordability that we may want to explore further.

Amendments 179 and 180 would add a requirement for a design statement setting out the design principles and concepts to be included in planning applications for certain types of development as specified by order. Amendment 181 would require both design and access statements to include details of any consultation that may have been carried out, either as part of the statement or as part of the pre-consultation report should the development require one.

We recognise the importance of good design and have produced the design series of planning advice notes, including one on design statements. However, we are aware that design issues may not always be given the consideration that they should and that by making it a requirement for certain classes of development, developers will be required to consider design when submitting their proposals.

We have already placed in the bill a provision that will require a planning application for certain types of development to be accompanied by an access statement setting out how issues relating to access to the development for the disabled have been dealt with. We agree that placing a similar requirement in relation to design statements is desirable. The amendments as drafted would generally have the required effect, but we would like to consider further the precise wording, to ensure that the bill was changed in the intended way. We would then lodge revised amendments at stage 3.

On amendment 181, as the forms of pre-application consultation reports and access statements are to be set out separately in secondary legislation and guidance, we do not consider it appropriate to include that detail in the bill. I ask Scott Barrie to withdraw amendment 179 and not to move amendment 180, on the basis that we will lodge improved versions of those amendments at stage 3. We consider amendment 181 to be inappropriate and ask the committee to reject it.

Scott Barrie: I feel rather smug and a bit like Meat Loaf, who sang "Two Out Of Three Ain't Bad". I thank the minister for her kind words. I am certainly pleased that she has taken on board the points that other members made, although I tell some people not to knock the Union of Soviet Socialist Republics totally—some good things came out of the Soviet Union and I do not like to hear it categorised as it was by some people.

The minister has accepted the main purpose behind the amendments. I would welcome the opportunity to work with her, if that is on offer—perhaps that is going too far—on improved wording to include design statements in a stage 3 amendment. On that basis, I seek to withdraw amendment 179.

Amendment 179, by agreement, withdrawn.

Amendment 180 not moved.

The Convener: Amendment 163, in the name of Fiona Hyslop, is grouped with amendments 182 and 172. I thank Fiona Hyslop for waiting patiently for her amendments to be dealt with.

Fiona Hyslop (Lothians) (SNP): I am the latest in a parade of visitors to the committee, which reflects the bill's importance. I thank the committee for its patience and endurance in dealing with a complex issue.

My amendments are about the role of local authorities, or lack of it, in regulating demolition. I refer the committee to its recent debate on the need for more affordable housing. In many areas—particularly the Lothians and my area of West Lothian—providing land for that involves brownfield site reclamation. Concerns have been brought to my attention through a constituency case that involved the Motherwell Bridge site in Uphall, which showed up a problem in the process and not just in practices.

In an answer to me in November 2004, the minister said that the Executive had

"published planning advice to local authorities on the development of contaminated land."—[*Official Report*, *Written Answers*, 4 November 2004; S2O-3823.]

She also said that when planning applications are approved, conditions can be imposed. The problem is that planning applications are not needed for most demolitions. Circular 2/1995 from the Scottish Office, which refers to the Town and Country Planning (Scotland) Act 1972, says:

"The new planning controls over demolition are intended to provide the minimum necessary level of control by exempting most demolitions from planning controls".

Correspondence from Graham Marchbank—Alan Cameron, who is present, was copied into it—raised concern, because it said that most recent definitions of demolition are in circular 1/2001, which explains that planning permission is necessary only for demolition that amounts to an engineering operation. A demolition does not necessarily involve engineering operations.

Graham Marchbank also said that the courts decide on and interpret legislation and that "Scottish Planning Law and Procedure"

"explains that most demolition is not development. It also explains that case law on what constitutes an engineering operation"

says that it

"amounts to operations requiring an engineer but not that an engineer need be present".

Even when planning permission is needed for demolition, there is a very narrow definition of what engineering work is implied in that. If we do not need planning permission for demolition, there is a gap in the process.

The issues are complex but I will try to keep my points simple and fairly brief. In the case to which I referred, there was crash demolition of large pieces of asbestos sheeting and the demolition was contrary to the directives on how asbestos should be disposed of. Right at the beginning of a process, when a building warrant is granted and a method statement drawn up, the local authority has a role. However, that is the end of their role until an application to build houses comes in, which can be much later. During a demolition, the Health and Safety Executive has a responsibility for the workers. It also has a responsibility for people not employed in the demolition but who may be affected by it. That duty is in the Health and Safety at Work etc Act 1974, but it is very general.

The HSE has only just opened offices in Scotland. It tends to take a carrot rather than a stick approach, and it certainly does not have enough officers to police the current amount of demolition activity.

In the case to which I referred, we were concerned about practices during demolition. Later, the Scottish Environment Protection Agency identified those practices as being problematic, as did the Scottish Executive. SEPA becomes involved in the disposal of materials only once the demolition has taken place and things are on the ground.

In this case, in March 2003 SEPA said that the asbestos cement would lead them to classify the material as "special waste", preventing its recycling as aggregate for future use on the site. The material was so bad that SEPA did not want it to be recycled.

Many brownfield sites are right in the middle of other housing developments. I am not against the development of brownfield sites—it is necessary—but I want it to be done safely, taking the public in the area into consideration.

My amendment 163 would mean that people who wanted to sell their land for the development of housing would have to apply for planning permission as part of the demolition and would have to take special waste into account. The amendment would mean that local authorities, who currently have no role in relation to demolition, would have one. Local authorities know much better than the HSE what is happening in their area should any problems arise.

Amendment 182 is technical; it helps to explain what special waste is in relation to the hazardous waste directive. Amendment 172 is consequential on that.

I do not believe in overregulation or in placing too many burdens on authorities, but public health must be our prime concern. This issue takes in planning, public health and environmental concerns. There is a gap in the provision. I think that local authorities used to take responsibility for the demolition of industrial sites, but not any more. My amendments would be a helpful and constructive move to remedy that.

I move amendment 163.

Dave Petrie: Obviously, before any such operation was carried out, a risk assessment would take place. As Fiona Hyslop said, health and safety legislation would come into play. There are also the regulations on the control of substances hazardous to health. Is the cover that Fiona seeks not already in the legislation that developers currently have to comply with? Does it have to be added to the bill?

The Convener: I invite the minister to respond to all the points raised.

Johann Lamont: Amendment 163 would require that any application to develop a site containing special waste had to be accompanied by a statement as to how the waste was to be disposed of before development. Although the Executive fully accepts that great care needs to be taken with any special or hazardous waste on development sites, under existing legislation—the Special Waste Regulations 1996 (SI 1996/972)—such requirements already exist. Similarly, there is further provision under the Environment Act 1995 for the remediation of contaminated land.

In addition, the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (SI 1992/224) enables planning authorities to require further information to allow them to deal with a planning application. Therefore, planning authorities already have powers to request additional information, such as detail of on-site special waste. It is not the function of the planning system to duplicate existing legislation—and I noted Fiona Hyslop's comments about overregulation. I therefore recommend that the committee rejects amendment 163.

Amendment 182 seeks to define the term "special waste" as used in amendment 163. However, a definition of the term already exists in legislation—in the 1996 regulations, as amended—which includes the definition that is proposed in the amendment. It is not the function of the planning system to duplicate existing legislation—although I have just duplicated that comment. Amendment 182 is therefore unnecessary, and I recommend that the committee rejects it.

11:45

Amendment 172 follows from amendment 163. Amendment 163 would require the submission of a statement on how special waste was to be removed from land before development, while amendment 172 would require planning authorities to make it a condition of the grant of planning permission that any such statement be complied with. As I outlined in discussing amendment 163, provision already exists under other legislation for the control and disposal of special waste. On amendment 172, planning conditions are required to be specific and enforceable, but we do not believe that the condition that is proposed in the amendment could be enforced successfully. It would be more appropriate to allow planning authorities the discretion to set specific conditions that are based on an analysis of the statement, in accordance with the guidance in planning circular 4/1998, which is on the use of conditions in planning permissions.

It might be useful for the committee to know that research is being conducted on permitted development rights. That research is not specific to, but includes, the issue of demolition. We will consult on the proposals that emerge from that. I ask the committee to reject all the amendments in the group, which we do not accept are necessary.

Fiona Hyslop: I thank the minister for her comments, but I point out that, if all the legislation that she mentioned was operational and successful, we would not be in the present situation. In particular, we would not have had the Motherwell Bridge case, in which the authorities were alerted regularly and consistently to the problems that were arising. The remediation measures that the minister mentioned under the Environment Act 1995 apply when materials are actually on the ground for removal. However, my concern is about the process of getting the waste on to the ground, so I therefore dismiss that argument. The operation of, and monitoring under, the 1996 regulations are up to SEPA, not local authorities. However, SEPA has told us specifically—I have the documentation—that its role starts when the material is on the ground, whereas it is the process of getting it on to the ground that is concerning. That might be Dave Petrie's concern about the 1996 regulations, which are mostly about what happens once such waste is on the ground. Our concern is about materials that cannot be seen, particularly asbestos.

If the existing law operated effectively, we would not have a practice of dismissing it. Local authorities need a role. They have told me that they do not have the power that the minister said that they should use. If we want brownfield sites to be developed, we have a responsibility to ensure that we have robust and clear legislation. As far as I can see, there is no legislation that refers to the treatment of special waste during the act of demolition, which is why I am trying to introduce a specific definition on that. For that reason, I will press amendment 163.

The Convener: The question is, that amendment 163 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, John (East Lothian) (Lab)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 163 disagreed to.

Amendment 181 not moved.

The Convener: Amendment 182, in the name of Fiona Hyslop, has already been debated with amendment 163. Ms Hyslop, do you wish to move amendment 182?

Fiona Hyslop: It is consequential on amendment 163, so I will not move it.

Amendment 182 not moved.

Section 6 agreed to.

Sections 7 to 9 agreed to.

Section 10—Pre-application consultation

The Convener: Amendment 164, in the name of Donald Gorrie, is grouped with amendments 165, 167, 170, 173, 191 and 192.

Donald Gorrie: I am afraid that my amendments to section 10 are slightly difficult to follow; however, that is due to how the bill is drafted. I thank those who have helped me to turn

some fairly straightforward ideas into things that will fit into the bill. As the committee has already said, the bill is built into another bill, which makes the whole thing even more complicated than usual. I am grateful to those who went the extra mile in trying to put my ideas within the straitjacket that is imposed by a bill.

The thrust of my amendments 164 and 165 is that, if a development is clearly contrary to the development plan, the developer must set out a statement explaining why, in its view, the development is necessary. I am trying to create an additional task that a developer will have to fulfil. There used to be outline planning permission and then detailed planning permission, but outline planning permission has disappeared. The amendments endeavour to make the developer explain—before it comes down to the nitty-gritty of details—why, in their view, the development is necessary despite the fact that it is contrary to the development plan.

The thrust of amendments 167 and 170 is that, if a development is contrary to the development plan, the planning authority must organise hearings so that the whole thing can be more fully explained. If, in the light of those hearings and people's comments, including comments about the consultation, which is mentioned in another amendment, the development is clearly contrary to the development plan and there has been inadequate consultation, the planning authority may decline to consider the planning application. In those circumstances, it will tell the developer to undertake more consultation. That is the purpose behind amendment 170.

Those are two different sets of ideas. First, amendments 164 and 165 would make the developer explain more fully what it was on about if a development was contrary to the development plan. Secondly, amendments 167 and 170 would cause the council to have a hearing and to take action if it thought that the consultation had been inadequate.

Amendment 192 addresses the same sort of issue as Euan Robson's amendment 191 and amendment 173 from the three wise ladies on my left. It is up to the committee and the minister to consider which of those amendments, if any, they think best addresses the issue. I have tried to address it as follows.

I have focused on developments either that have the council as a significant player in the development—as the owner of the land, a sharer in the development results, or whatever—or that are clearly contrary to the development plan. Amendment 192 is limited to those two points: the council as a party to the development and a major breach of the development plan. In either circumstance, the council would have to tell the Scottish ministers that it was minded to grant planning permission. The ministers would pursue the matter and if a relevant community body—the community council or other important body, as amendment 192 sets out at some length—indicated that it opposed the development, ministers would have to review the proposed decision. Under proposed new section 43(9) of the 1997 act, ministers would have to take account of

"local public opinion, the views of relevant community bodies … the views of any other local authorities affected"

and

"the reasons given by the planning authority for proposing to grant the planning permission."

If ministers thought that there was a case for calling in the application, they would do so and a full inquiry would ensue in the normal way.

The proposed approach in amendment 192 follows the Executive's admirable philosophy in the bill, whereby the Executive wants as much early consultation as possible. My suggested approach offers another route for consultation on developments in two sensitive circumstances, by making provision for ministers to review a proposed decision in the light of local public opinion, which might lead to an application being called in.

Amendments 173 and 191 cover similar ground and I will be interested to hear what members say about them. If, in its wisdom, the committee prefers one of those amendments, I will be happy with its decision, but it is important that the issue is addressed and that there be an additional stage in sensitive planning applications.

I have set out my stall on the amendments in my name.

I move amendment 164.

Jackie Baillie: I am grateful to the committee for giving me the opportunity to speak to amendment 173 and to the minister and her officials for our meetings during the past few months. I am sure that the minister will be delighted to know that the process has helped us to refine our proposals.

I am delighted that Donald Gorrie approves of the wisdom of Sarah Boyack, Pauline McNeill and me. Amendment 173 reflects our considerable background work during the past year. We took soundings from a variety of stakeholders, including planners, senior lawyers, members of the Faculty of Advocates and—most important—communities. We deliberately avoided the increasingly polarised debate on third-party right of appeal and we have come up with a middle way. Our solution is elegant—I am sure that the minister will knock me back on that—and would ensure that the Executive's good work is built on while giving communities the opportunity to participate at the

end of the planning process and not just at the beginning. Our proposal would deliver equity and fairness in the system and would ensure certainty for developers.

Amendment 173 proposes a community right of notification, which would mirror the requirement that is placed on local authorities to notify ministers of planning applications that merit call-in. I will deal briefly with the criteria, cost and process.

The criteria for notification by a local authority are set out in regulations under the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997, of which we heartily approve. The Executive indicated to the committee its intention to expand the criteria for notification to include all local authority interest cases, major and local developments that are significantly contrary to the development plan and developments that require an environmental impact assessment—I could go on, but members get the idea. We do not propose anything different, because the expanded criteria are sufficiently wide to encompass most scenarios. It is appropriate and desirable that, instead of setting out the criteria in the bill, ministers should have the flexibility to add to the regulations.

12:00

Our proposal would have minimal additional cost, because local authorities are already required to notify Scottish ministers. The Executive has anticipated that more notifications will come from authorities as a result of the expanded criteria and has allowed for an increase in notified applications from 350 in the current system to 800. Of course, it is worth spending a little extra money to get the system right.

The procedure would be relatively simple. First, a body would have to be registered as a community body. Amendment 173 clearly sets out the criteria for registration. A "relevant community body" would be a community council that represented the area to which the application related or a formally constituted body that had a postcode connection to the area. Amendment 173 would give ministers enabling powers to make regulations in that regard, because we want to ensure that groups from outwith an area cannot come along at the last minute and attempt to use the notification process. We envisage a process in which local authorities would list relevant community bodies.

Amendment 173 sets out in broad terms the process that would be followed. A community body would be expected to have objected to the development. Within seven days of a local authority deciding that it was minded to grant planning permission in a case that required to be notified, the authority would have to notify the community body. Within 14 days the community body could require the authority to notify the application to the Scottish ministers. The community body would have to give reasons for its request. The application would then go to ministers for consideration and there would be two potential outcomes: agreement would be reached so that everyone was happy; or there would be disagreement. Whatever the scenario, ministers would have a complete picture of the issues to do with the application.

Communities and local authorities might be united on many applications, which would be useful for the minister to know before making a decision on an application that might at first glance appear contentious. I know that members have come across examples of such applications in their areas.

The approach would be especially effective when decisions on whether to notify were marginal, for example if a council thought that there was no significant departure from a development plan, but the community hotly disputed the council's position.

We spent quite a while consulting on and refining the proposal. The proposed approach is fair, because it would give rights to communities not just at the start but throughout the process. Our proposal is transparent, because it would ensure participation at every stage. It would also increase the accountability of local authorities to their communities and of the Executive, by requiring ministers to give reasons for not calling in an application, which would be helpful.

The proposed approach is proportionate. It would not create a third-party right of appeal or cause unnecessary delays. It would deliver certainty for communities, local authorities and developers. Above all, it would instil trust and confidence in the system.

I acknowledge the minister's positive approach to involving communities in the creation of a planning system that is fit for the 21st century. Amendment 173 would contribute to that approach. I have tried flattering the minister in the past. I recall an exchange in which I think—I am not certain—that she described herself as a pussycat. I was going to end by borrowing John Home Robertson's approach and saying, "Be brave, minister." However, there is no need for the minister to be brave. The approach in amendment 173 is logical and well supported. The minister knows that it would work, because she is wise.

The Convener: We will be interested in the minister's response to those comments.

I remind people that mobile phones and all electronic devices should be switched off. There

has been some interference with the sound equipment.

Euan Robson: I lodged amendment 191 because it is important that there should be a notification procedure when a local authority intends to grant planning permission for an application that is contrary to the strategic development plan and which has generated a substantial body of objections.

We rightly debated, in both the committee and the stage 1 debate, the importance of development plans and the importance of community involvement and consultation. We put considerable emphasis on the unsatisfactory nature of out-of-date development plans and we set an important target for development plans to be redrawn every five years. If there is a departure from a development plan during that time and it is the subject of a body of objections, it is right that the application should be notified to ministers so that they can consider the circumstances and deliver a determination in the normal manner. Not to have something of that nature would undermine the philosophy of the bill and contradict the assertions that we all made about the importance of development plans. It would also undermine confidence in what I hope will be the new act.

In common with all back benchers who lodge amendments, I admit that my amendment might not be entirely correctly drafted. I think that it is workable, but I stand to be corrected. However, it is important that we address the issue. The minister has said on previous occasions that she would look to act in this area, particularly around local authority interest cases. If she is prepared to give a commitment to bring forward something that meets the objectives of amendment 191, I will happily not move the amendment. However, I believe that we have to act in this area to reinforce the points that have been made in the past about the bill and to underpin its effectiveness in the future.

Christine Grahame: The amendments in the group represent a pre-emptive strike of plan Bs to divert attention from calls for a full-frontal third-party right of appeal, which we will discuss when we come to amendment 130, which will be moved by my colleague Sandra White. I recognise that colleagues are making endeavours to represent communities' serious concerns. However, notwithstanding the good will that the minister exhibited to the idea that consultation and participation of communities should mean exactly that, and notwithstanding the various amendments on the matter, people still think that a rubber-stamp job will be done. They will go through more processes, but they will not have the same rights to plans as the other parties, such as the planning authority or the developer, will have.

I can think of a particular instance in which I was battering on about variations that take place after planning applications receive consent and cases in which a variation can be agreed between the developer and the planner. We will come to that later.

I note that Jackie Baillie has picked up much of what Sandra White said in her member's bill. The various amendments pick up on situations in which it can be established that the local authority has an interest—whether direct or indirect—that is contrary to the local development plan and that there are significant community objections. My position is that the amendments are not rigorous enough. However, subject to what the minister says, and on the basis that it is better to have a fallback position and put your full-frontal position later, I will support one or other of the amendments if they are moved.

Patrick Harvie: Jackie Baillie makes a strong case for involving people and giving them an opportunity to be involved at the end of the process as well as at the beginning. None of us is against early involvement. We want to encourage early participation and involvement and we want them to work, but if people are involved in the process for a longer period of time and then, at the end, they feel let down, excluded and locked out, that might undermine trust and confidence in the system even more. There is a strong case for people to have the opportunity to be involved at the end of the process.

I will comment briefly on Donald Gorrie's amendments then ask a few questions, which I hope will be answered by Jackie Baillie or whichever one of the wise trinity of Jackie Baillie, Sarah Boyack and Pauline McNeill closes.

Donald Gorrie's amendments ask for a statement that explains why a development is being proposed despite being contrary to the plan. If we were to ask that question now, the answer would often be that it is because the plan is out of date and no longer makes sense. However, plans will be kept up to date if the new system works as it should do. An issue is that, if I may put it this way, not all developers are motivated by the good of society—they have other motivations—so I fear that if they were to give an honest reason, it would be, "This development is required so that I can make money." Any other reasons that they gave would have to be taken with a large pinch of salt. If development plans are kept up to date and the answer that is currently given is therefore out of the window, I am not sure how useful a statement of reasons would be. However, I support the broad thrust of Donald Gorrie's amendments.

Amendment 173 begins by enabling ministers to determine the type of application to which the process will apply. How does Jackie Baillie

envisage that working? What does she see as the appropriate scope of the process?

The amendment then describes the involvement of a community body, but there will be occasions when a community is sharply divided. If an application is highly contentious and controversial, the divisions within, for example, the community council might be such that it could not express just one view. Is there a way of ensuring that that situation would not lock out the community body from engaging at the end of the process?

The requirement for the community body to provide information alongside the notification of the application must not become a significant burden on community councils, which by and large are underresourced.

Ultimately, if the process that is set out in amendment 173 is agreed by the committee and is included in the bill, the proof of the pudding will be in the eating. Three years down the line, people will want to be able to see that the process has resulted in some inappropriate developments being not only re-examined, but knocked back. The way to achieve that is to give communities some power directly. I am concerned that the amendment would not give power to communities, but would merely give them the opportunity to have ministers exercise their own power.

My final point concerns the definition of a community body. Donald Gorrie's definition in amendment 192 seems better. If the committee supports Jackie Baillie's amendment 173, would she be open to having the definition tweaked at stage 3? The statement that the community body must

"consist solely of members who— …

(ii) are entitled to vote at any local government election"

would exclude young people from involvement in such organisations. In addition, I wonder whether other aspects of the definition would exclude bodies that represent neighbouring communities, which do not have a direct interest in the land being developed but will be affected in knock-on or indirect ways.

I have no great objection to Euan Robson's amendment 191, but I am afraid that I cannot work up a great deal of enthusiasm about it. It seems to pull at the edges of the problem rather than take it on directly, so I am equivocal about it.

12:15

John Home Robertson: As I understand it, the bill's fundamental objective is to create a new framework and culture of consideration of development proposals around Scotland—proactive planning with community involvement at every stage. I am a little suspicious that we are dealing with an amendment that could throw a spanner in the works before we even start. Surely the idea is to get away from the fundamentally reactionary and adversarial process of dealing with planning applications as they come along and of people trying to knock back applications because they think that something should be located in someone else's backyard.

I honestly do not think that there should be an entrenched role for self-appointed pressure groups or serial objectors. I am not suggesting that anyone is actually calling for that, but we should guard against creating a mechanism whereby such bodies and individuals could be given a new way of thwarting projects that wider local communities require.

Jackie Baillie was positively oozing with charm when she spoke to her amendment 173; she is very good at that sort of thing. However, perhaps we should be careful when Donald Gorrie comes along and praises her. During my career, I have learned to beware of Liberal Democrats bearing compliments.

This member of the committee remains deeply suspicious of the idea of a third-party right of appeal in the new planning system that we are trying to establish with the bill. I fear that such amendments carry a risk of creating an old-fashioned charter for obstruction. We need to give the new framework that the Executive has proposed a genuine chance to work for regions and communities throughout Scotland. I will be interested to hear what the minister says, but I am not sympathetic to what is being proposed.

Sarah Boyack: I echo John Home Robertson's comments about how the process should be proactive and engaging at every stage. In a sense, that is what has brought us to the table. We have read the committee's deliberations and have been engaged in the same debate for the past year. Debate in the Parliament on the issue of third-party rights of appeal goes back about four or five years. We brought amendment 173 to the table as a genuine attempt to respond to the issues that the committee has been dealing with throughout the process.

We believe firmly that the system needs to be followed throughout the process. We agree totally with up-front investment in the system; that should help. When my local authority has taken interesting and innovative approaches in encouraging communities to speak to the planning committee in a regulated and fair format, with the community and the developer getting the same amount of time, the community has felt itself to be more a part of the process, even when the decision did not go with the community. There is a very good strand in the bill that will help.

However, I am slightly cynical—although that does not seem to be the right way of putting it—because, during 20 years as a planner, I was taught exactly the same principles of participation and community involvement and I know that it will take more than the words in the bill to achieve that. We must consider what happens at the other end of the system. If people are to be engaged throughout the process, they need to be able to trust as they go through the process.

The local plan stage is crucial, although—as we all know—it is hard to get people to engage at that level, partly because they do not feel that it will be worth it later in the process, and partly because local plans need to be prepared more regularly and to be relevant and up-to-date. I therefore agree with the emphasis on that in the bill. However, it is not enough. There are issues that could undermine the approach. Let us look at the nature of development plans. How detailed are they? How open are they to judgment by planning officers or councillors? How are they interpreted? We can see the trend towards broader, criteria-based policies in my own local authority; one of the difficulties with that lies in knowing the point at which the community's views will be acted upon.

One argument that is currently used concerns local planning policy being set aside or overridden. That is a real issue, even when there is an up-to-date local plan. I can give the example of a local plan that had been in place for only a year when the local planning authority overrode the plans for housing on a site and turned it to commercial use. Under the current system and under the bill, that would be the end of the story; nobody could say anything. However, if the community had engaged in the local plan process in good faith, had made representations, had supported the site's development for housing and then found out at the end of the process that the site was to be used for commercial development, there would be a sense of injustice.

Our amendment 173 tries to right that potential wrong. It does not guarantee that the community's views would be taken on board in the end, but it guarantees that those views would be kicked up one level to the minister. It retains accountability in the system. It introduces a sift, not an indiscriminate process or a third-party right of appeal under which every objection would go automatically to appeal. We have worked hard on the amendment. A crucial point is that the amendment does not introduce a third-party right of appeal; it is about the local authority's intention to approve an application. It would come into play before the local authority had issued a decision letter but when it had decided that it wanted to approve a development. That means that no deals would have been struck and no legal and financial commitments would have kicked in.

Amendment 173 would put into play a short process. If a community has been involved in a planning process, it should be allowed to see it through to the end. Under the amendment, a planning decision would be kicked upstairs to the minister. I know that she is not enthusiastic about that but, in the absence of another sift, it is legitimate and would improve the system. We lost the second tier of local authorities when we lost the regions and the sift that they formerly provided has disappeared, but it would be good to have more rigour and a backstop in the system. MSPs get involved in the system informally and can sometimes get the minister to call in a decision, but the communities are not part of that process and it is not transparent. Historic Scotland can get a decision referred to the Scottish ministers, but a community council cannot do that even when there is a good ground for a decision to be referred. That is a weakness in the proposed system.

We have been tight on the definitions of "community body" in amendment 173. We have said that a community body must have made representations; it need not necessarily have made objections, just representations, but it must have been part of the process. We have not specified too much in the amendment because it builds on where the Executive is going anyway and gives the Executive the flexibility to make further specifications in regulations. It is for the committee to judge what goes into the bill. Members get involved in such debates endlessly, but our judgment is that the minister is well capable of coming up with what should be required in a notification procedure and that the amendment is entirely in line with the direction in which she has been moving.

There might be some common ground in the committee today, although I would not go too far on that. Jackie Baillie, Pauline McNeill and I have been working for a long time on amendment 173. I was interested to hear Euan Robson's explanation of amendment 191, because the matter was discussed in the stage 1 debate. Perhaps there needs to be more reflection and thought, but I reassure members that amendment 173 does not introduce a third-party right of appeal by the back door. It would provide a better system. It would provide for a sift and give the ministers the chance to make a judgment. The local authority's views and the communities' views would be examined side by side and the decision would not just be left in the hands of the local authority.

I am sure that, from our work as local MSPs, we could all quote casework in which the local authority did not get the decision right and we felt that it needed to be re-examined. Amendment 173 would provide for that process, but it would not guarantee that every application would gum up the

system. It takes a different approach from third-party right of appeal—it is more discriminate—and it is worthy of the committee's close examination.

Pauline McNeill: Like Sarah Boyack and Jackie Baillie, I have submitted responses to the various white papers and have followed the planning process for some time. It is a pleasure to be able to escape from the Justice 1 Committee this morning—we had an unusually short agenda—to catch up with the work that the Communities Committee has been doing.

To take the Jackie Baillie approach, it is fair to welcome the fact that the years of consultation on the matter have resulted in the Executive adopting the provision in the bill that will require local authorities to notify more; I note that that notification procedure will involve additional work for the Executive. The policy has moved in the right direction, but amendment 173 would enhance community involvement and take the process a little bit further without unduly burdening the planning system. We understand the importance of that from our discussions with those who are concerned about what adding anything to the system might do to economic development. The amendment was drafted to take that into account. As I am sure members would expect, we do not necessarily think that we have got the drafting right at the first go—actually, we have had a few goes—but that is what stage 2 is about.

I believe that amendment 173 is needed. For me, the bill does not go far enough in giving communities a meaningful way in which they can make a challenge in certain narrow circumstances. There will be occasions when planning authorities do not notify the Executive where the scope for interpretation lies. The authority may decide, for whatever reason, that it will not notify because, on balance, it thinks that notification is not required. I believe that there should, in effect, be a third-party way of making challenges; I believe that that third party should be a community body, as defined in amendment 173.

The proposal is for an attachment to the notification procedure, not for a right of appeal. The Scottish Executive would apply policy in exactly the same way that it is already provided for. There would be a further check in the process, not a completely independent process; I have never argued for that. The principle is still important, however.

Patrick Harvie mentioned the definition of a community; I am sure that Jackie Baillie will want to come back on that point, as I know that she has done quite a bit of work on the definition.

Christine Grahame: She cannot do that.

Pauline McNeill: Right—she cannot come back on that. We have done quite a bit of work on how to define a community. We tried to steal the definition from other bits of legislation, but it could be open to amendment if that was required.

With regard to Patrick Harvie's second point, we believe that community bodies, however they are defined, should in principle have the right to challenge, whether or not something has been notified. Whether or not a community is divided, the community body that triggers something does so only in so far as it is saying that the local authority has not notified people of something that the body believes to be a departure from the local development plan. The body is asking the Executive to examine the rules and to ascertain whether they have been applied. That does not prevent the Executive from considering that there are mixed views on the matter, as it would do even under a third-party right of appeal.

Patrick Harvie: Can the member take an intervention?

The Convener: If it is brief. Although Ms Baillie has no right to speak again in the debate on this group of amendments, I will, at my discretion, allow her to respond. I ask for your intervention to be extremely brief.

Patrick Harvie: I am grateful to both the convener and Pauline McNeill. Perhaps Pauline McNeill has misunderstood the point that I was making, which is that the community body would have to have made representations on the planning application in the first place. If the body was divided, it might not have been able to take a view.

Pauline McNeill: We have been careful in drafting amendment 173 in such a way as to define clearly which community bodies would qualify in this context. They will have their own constitutions with respect to making representations, I imagine.

John Home Robertson made a point that I think Sarah Boyack answered. We are very much alive to the fact that any process that is put in place could go on endlessly. It must be ensured that consultations with communities are meaningful. It cannot be right, however, that no one else can challenge a local authority's judgment that it has not contravened the local development plan. It is not right for the authority to be both judge and jury, particularly when it has an interest.

Arguably, there has always been an anomaly in the system. When a decision to grant permission is made, it is still possible to make representations to the Scottish Executive, as long as the letter of notification has not been received by the developer. There has always been that window if people can persuade the Executive that there is a reason for a matter to be examined. Amendment 173 provides a way to formalise that.

I will give an example of what I am talking about, relating to disputes over the meaning of a local development plan. We are meant to be applying a plan-led system, because that is what we believe in. However, it is only a plan-led system in so far as we all agree on the interpretation of the local development plan.

Queensborough Motors in Hyndland in my constituency is a low-level building in a conservation area. The local plan does not allow buildings of more than two storeys in any lane. Although the Ordnance Survey map indicates that the building in which there requires to be a development is in a lane, the local authority has decided that it is not in a lane but in another street. We dispute that, but we have no right to challenge the council's decision. That material fact determines not whether the development can proceed, but whether it will be two storeys or five storeys. It is not that communities are out to oppose everything; it is just that they want a say in the nature of developments. It is to the advantage of local communities to give them such a say and it can enhance the landscape. I hope that I have provided an important illustration of the problem of interpretation.

Another problem is that when a planning committee refuses to grant planning permission on the basis of the local plan, that does not prevent the developer from appealing and arguing that the local authority failed to apply the local plan and that the developer has a different interpretation of it. The local authority is judge and jury on the local plan but, unlike anyone else, developers have the right to challenge it when there is a dispute. More work needs to be done on that. I am keen to support an amendment that, in spite of its narrow scope, would provide the opportunity for communities—which we all believe should be involved in the planning process—to use the notification procedure in the way that has been outlined. Jackie Baillie mentioned the guidance under the Town and Country Planning (Scotland) Act 1997, which ministers can use if they think that such grounds exist for challenge.

12:30

Tricia Marwick: I welcome all the amendments that have been lodged to this part of the bill, although that does not mean that I will necessarily support them all. Members' minds are focused on the fact that communities do not seem to be well represented at the final stage of the process. It is interesting that there is cross-party recognition that the bill does not go far enough on that point.

We are discussing a technical issue. I am glad that Jackie Baillie will be given the opportunity to sum up, because I am confused about the process that she is suggesting. New subsection (6) that amendment 173 seeks to insert in section 15 states that when

"the planning authority is minded to grant planning permission, the authority must, within 7 days of deciding that it is so minded, notify the relevant community body that it is so minded."

There is the local authority and there is the planning committee. At what point would the planning committee decide that it was so minded? Would that happen when officials wrote a paper in which they made recommendations? Is that when the community would be notified? If that is the case, notification would be carried out by officials rather than by councillors.

The alternative is that councillors would attend a planning meeting and all their planning decisions would be taken on the premise that they were minded either to accept or to reject applications. Why should they not just state, "Yes, we will support it," or, "No, we will not support it"? I am confused about how the process would work, technically, at that stage. Our councillors would find it confusing if we told them that they would be able to take a decision not on whether to approve planning permission but only on whether they were minded to approve planning permission. I find it confusing, and I am sure that councillors who read the *Official Report* of our exchange will find it confusing, so I would welcome clarity on that point.

The Convener: Before I allow the minister in, I will allow Ms Baillie to respond to points that relate specifically to amendment 173; I do not want her to sum up on the entire debate.

Jackie Baillie: I will resist the temptation to do that. I know that you will cut me off in my prime if I even dare to try.

I will respond to the last point first. Under the current regulations, councillors already follow the procedure that has been described. The text of the regulations states:

"The current system of notification to Ministers works as follows. Scottish Ministers must be notified where a local authority is minded to grant planning permission for a development which falls within the categories listed in the schedule to the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997."

Already, we have a position in which the decision to grant planning permission is made not by the planning officer but, appropriately, by a committee of elected members, which is required to notify ministers when the proposal fits into categories that ministers have set out by secondary legislation. Currently, that includes, for example, the operation of large coastal quarries.

I am sure that the minister will deal with this issue more effectively than me, but I understand that the local authority issues a decision letter,

following which all sorts of issues about legal and financial contracts kick in. Therefore, we are talking about the point in the process that Sarah Boyack described perfectly: the point before a final decision is made, but when the authority is minded to grant planning permission. That is the point at which the natural, current procedure kicks in anyway. I hope that there is no undue confusion, because we are following, to the letter, the current system.

I want to respond to a couple of points that Patrick Harvie made. I have dealt with the issue about regulations. The position is set out in the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 and the Executive has indicated in its financial memorandum, if not in its policy memorandum, that it intends to expand the scope of that direction, which is welcome.

We are not interested in having only one registered community body; there is an opportunity for a number of community bodies to register at their local level. Those bodies could be community councils, which have a distinct place in statute, tenants and residents associations and so on. Therefore, where there is a divided view, we would expect that view to be reflected. Indeed, I think that that would be instructive to ministers in determining which applications to call in.

We do not want any burden to be placed on community bodies, but because we are insisting that they must have objected in the first place, they would have followed through the process. We envisage that nothing new would be introduced at that stage. Most of the material would have been introduced at an earlier stage, so when they seek notification to ministers a brief summary of events will be required rather than a submission that introduces anything new.

Success is not measured by whether something is knocked back. For me, success is not about refusing applications; it is about ensuring that we have even fewer notifications to ministers. That will show that the system works and that people trust it and have confidence in it.

We have defined “relevant community body” quite tightly. We want it to be about local communities; we do not want it to be about organisations that spring up and come from outwith the area. At the end of the day, it is those local communities that will live with the consequences of decisions that are made. I am minded to acknowledge that there is an issue about young people being involved in the process. However, community councils should have a programme of actively involving younger people in their communities. We will reflect further on that.

John Home Robertson did not make a specific point, but I say to him that culture change takes time. Amendment 173 would not introduce a third-party right of appeal. We are clear about that. I say to Christine Grahame that this is not a fall-back position; this is a distinctive position that has much merit.

Johann Lamont: Convener, I want to respond to certain points that were made in the debate, but I hope that you will allow me to put on record some of the considerations around the amendments that have been lodged.

There is no doubt that there are challenges in this area for all of us—not least for the Scottish National Party, which is in favour of the third-party right of appeal while having an enterprise spokesperson, Jim Mather, who has explicitly said that he is opposed to it. Even at the simple level of people making their minds up on the issue, there are clear challenges. We must be honest and mature. That split within the SNP is evidence that there is a difficulty in that regard. Similarly, there are Labour members who take a different position from me on community notification.

Patrick Harvie and Tricia Marwick spoke about communities feeling that they are not engaged properly and that, no matter how early and how well they are engaged, they will ultimately be disappointed. However, that point was rather cut across by Patrick Harvie’s point that communities are often divided. Almost by definition, no matter the shape or system, there will be those who are content and those who are not.

Where those in a community who are in favour of more affordable housing are confronted by those who campaign hard not to have it anywhere near them, there will inevitably be disappointment. In the planning system, we simply have to accept that that will happen. Planning authorities and, ultimately, ministers have to make a judgment in such cases. People will just have to live with that.

In planning terms, we cannot please all of the people all of the time, nor should we where people seek to prevent, for example, progressive developments that aim to assist people but which others do not want to have anywhere near them. We have to be honest about that. That is the challenge that we have to deal with in the planning process.

The Executive has sought to be both efficient and inclusive, to the extent that we can balance one against the other. We know that an important balance has to be struck between local and central decision making. Pauline McNeill set out her contention that people would at least feel satisfied if cases were brought in and given further examination. I am not convinced that people who are unhappy about or frustrated by a development

will accept the decision that someone at the centre takes, especially if they uphold the original decision. That is not how people feel about centralised processes. People do not feel that a minister is some sort of Solomon figure whose decisions they—along with everyone else—sign up to in the end. That is not my experience of the process. I should also state up front that the notification procedure is not without costs. Significant time and resources are involved even in the decision to call in—or not call in—an application. The process must not simply extend the system but add to it.

We should seek to balance efficiency and inclusion. We need to recognise the tension between localised and centralised decision making and the checks and balances that are needed in the process. We also need to ask ourselves whether something is an effective addition to the process or whether it simply extends it. We need to know whether a measure has a purpose or is counterproductive.

Sarah Boyack made the point that people have always been involved in engagement; it is consultation that often has not been done. We need to emphasise the primacy of development plans and the importance of inclusion. We are talking about much more than the tick-box level of engagement. In order to do that and to get people to engage in the system, we have to take out of the system stuff that simply bears down on people and wastes their time and energy on bits of bureaucracy that simply go on to grow legs of their own but do not add to the process. I think that we are all signed up to that.

I turn to the amendments in the group, which I will take in turn. Amendment 164 would require applicants to carry out pre-application consultation on major developments that are contrary to current strategic development plans or local development plans. The intention in the white paper was to have such consultation on major developments that were significantly contrary to development plans. Our intention is to go further than that—indeed, we will go further than the conservative request that Donald Gorrie makes in his amendment 164. We will require that all major developments are subject to pre-application consultation. Given that requirement, there seems little point in singling out a particular category of major development for mention in the bill. I ask members to acknowledge the shifts and movements that the Executive has made from the white paper to the drafting of the bill and now to our engagement at stage 2.

The substance of amendment 165 is to require a statement on the reasons why a proposal departs from the development plan to accompany the proposal of an application notice. It is in the interests of the prospective applicant to do that in any case in support of his or her application. I suggest that we consider the matter when we make the related subordinate legislation. It does not need to be flagged up specifically in the bill, particularly given that we now intend to have pre-application consultations on all major developments, not only on those that are significantly contrary to the development plan. I recommend that the committee rejects amendments 164 and 165.

Amendments 167 and 170 seek to require hearings during pre-application consultations on major developments that are significantly contrary to the development plan to ascertain whether there is suitable justification for such a departure. If the hearings did not produce such a justification, the planning authority could decline to determine the subsequent application. In effect, that procedure would move the planning authority's consideration of a case from the application phase to the pre-application phase. That would undermine the process for considering planning applications, during which time the development plan and all the other material considerations are brought to bear in determining the application. The whole point of pre-application consultations is not to judge the case but to bring to the fore, and perhaps deal with, potential concerns surrounding a project. Instead of viewing the process as a means of marshalling arguments against the proposal, it should be seen as a productive and positive means of engaging people with it.

12:45

In addition, as there are no planning appeal procedures for cases in which a planning authority declines to determine an application, there would be no appeal procedure by which the planning authority's view that there is no justification for departing from the development plan could be tested. The other grounds for declining to determine applications relate to cases in which the planning authority has twice previously refused permission for the same proposal. In such cases, it is open to an applicant to appeal against the refusal of permission before making another application, which the authority may decline to determine. In such cases, there is ample opportunity to test the planning authority's view of the case. The other new ground for declining to determine an application is that the applicant has failed to comply with requirements on pre-application consultation, but that problem can be remedied by the applicant going back and making the application properly.

It is already our stated intention to have pre-application consultations and pre-determination hearings on proposals for major developments

that are significantly contrary to the development plan. Planning authorities will be required to report on how their decisions on such cases were reached and the applications will be subject to notification to ministers. That should allow sufficient scrutiny and consideration of any grounds for departing significantly from the development plan. Therefore, I recommend that amendments 167 and 170 should also be rejected.

Amendment 173, in the name of Jackie Baillie, would introduce the concept of a community right of notification procedure. I recognise the work that has gone into the amendment. However, although I might accept a third way on some occasions, this is not one of them. The amendment would provide that, for certain categories of application, planning authorities would be required to give designated community bodies the opportunity to require that the application be notified to Scottish ministers.

We have always said that our package of modernisation proposals aims to strike a balance that combines the need for greater efficiency in planning decision making with a better quality of public involvement. That balance ought not to be dismissed. The new system should make it easier to deliver our priority of sustainable economic growth and, as we discussed earlier, provide the supporting infrastructure that is necessary for that, such as housing—including affordable housing—water and drainage, schools, hospitals, transport, waste management and energy.

Such developments should be achieved in a way that engages and involves all affected communities. For that reason, our proposals focus on securing meaningful community engagement at the front end of the process, both in development planning and in early engagement in applications. We believe that the limited resources that are available to planning authorities should be focused on those areas at the front end, as that is where they will make a difference. I am concerned that amendment 173 would significantly disrupt that balance for little real benefit.

In the context of the debate on appeals, we discussed at length our view that additional procedures and complexity at the later stages of development management would not be productive. Indeed, that is why we sought to address the issue concerning first-party rights of appeal, the procedure for which is occasionally abused by applicants who use the appeal to reinvent the application because huge amounts of time are given in which to decide whether to make an appeal. The bill will reduce the timescale for such appeals and will require planning authorities to scrutinise the application as submitted, rather than the application as the applicant would like it to be. That shift should be recognised in this context.

We have already set out that, in addition to the many categories of notifiable applications that already exist, planning authorities will be required to notify other applications, including certain local authority interest cases; developments that are significantly contrary to the development plan; developments that require an environmental impact assessment; and larger-scale bad neighbours. For all those cases, the community right of notification procedure would build in a further delay of three weeks, or possibly more, and increase resource pressures on local authorities, but the outcome—notification to ministers—would be no different. The proposed procedure would be an exercise in bureaucracy and delay that would not give communities any new meaningful input into the system.

I appreciate that people have been disappointed that applications that they thought should have been notified to ministers were not notified. However, given that local authorities are the planning authorities for their areas—we had this discussion last week—it is right that the role of notification should fall to them. Our experience has shown that councils tend to err on the side of caution by notifying applications that they are not entirely certain require notification. We will publish guidance to assist with understanding the notification of cases to ministers.

Further, I am not convinced that the concept of "relevant community body" is workable. Our view is that, where there is a role for public or community engagement, it should be based on legitimate interest rather than on the ability to create formal structures. There is a risk that the proposed approach could increase a sense of exclusion for those who do not fall within the strict criteria, which also seem to be arbitrary.

In the context of the overall package of modernisation proposals, our view is that a community right of notification is not the right area on which to focus resources. The planning process has suffered from procedural complexity and delay, and new procedures should be added only if they bring real and substantial benefits in relation to efficiency, genuine engagement and the capacity to ensure that decisions are enforced. I am not convinced that amendment 173 achieves any of those aims, therefore I do not support it. I ask Jackie Baillie to consider not moving it. If she moves it, I ask the committee to reject it.

Euan Robson's amendment 191 to a certain extent duplicates a requirement that already exists. Under current legislation, there are already powers to require notification where planning authorities propose to grant permission for developments in specified circumstances. That is a long-standing arrangement and we have already stated our intention to add to it. In our white paper

"Modernising the Planning System" we said that we would enhance scrutiny for major and local developments that are significantly contrary to the development plan. We will do that as soon as possible after the Planning etc (Scotland) Bill is passed by issuing a new notification direction that will require all significant departures from development plans to be notified, irrespective of the scale of local objection. That reinforces our commitment to the primacy of the development plan in planning decisions.

It is reasonable that local authorities, as the planning authorities for their areas, sometimes seek to grant planning permission for development that does not accord with the terms of the development plan. Sometimes, circumstances make that necessary, which is why planning legislation sometimes allows material considerations to outweigh the development plan.

Although we will require planning authorities to notify us when a development would be a significant departure from the development plan, it would be excessive to require minor departures from the plan to be notified. It is unlikely that there would be cause for ministers to intervene by calling in such applications. In such cases, the planning system would not be well served by adding further delay to the timescale for obtaining planning permission.

I am concerned that taking the notification requirement out of the long-standing powers that allow ministers to make directions and putting it into the bill would restrict the much-needed flexibility to amend the notification requirement whenever necessary to react to changing needs or circumstances. Historically, amendments have been made to update past notification directions, but that would be more difficult if the detail of notification requirements was in primary legislation. It would also lead us to a two-tier approach to the need for notification, with some categories being set out in primary legislation and others in directions.

I am also concerned that the amendment would rigidly allow only a period of 28 days for ministers to decide whether to call in a planning application. Although that is the timescale given in our existing notification direction, it also allows for an extension to the timescale where necessary. In the vast majority of cases where applications are notified to us, we make a decision within 28 days, but there needs to be some flexibility to allow for a proper assessment to be made when complex issues are involved.

I understand the intentions behind amendment 191, but I assure the committee that we are already committed to enhanced scrutiny of development plan departures. The amendment unnecessarily duplicates existing powers and it would create a dangerous new inflexibility in our powers to require notification. We should not regard the notification direction as having less force in law than it would have if it were in the bill. I therefore ask the committee to reject amendment 191.

The effect of Donald Gorrie's amendment 192 would be similar to that of amendment 191—it would duplicate existing provisions and the changes that we propose for an enhanced level of scrutiny. We will require local authority interest developments to be notified to ministers when the proposal constitutes a departure from the development plan or it has been the subject of a substantial body of objections. That will be the case irrespective of the scale of the development or the significance of the local authority's interest. We will also require significant development plan departures to be notified. Again, such proposals will not need to be designated as major developments to require notification.

For the same reasons that I gave in my comments on amendment 191, it concerns me greatly that amendment 192 would include the notification requirement in the bill. The review process that the amendment proposes does not appear to differ from the planning assessments that we already carry out when applications are notified to us by planning authorities, which inform the decisions that we make. It is entirely unnecessary to add to the system a further, formal procedure that does not improve scrutiny. I note that support for such a review would be limited to the community council or a body or trust with the relatively narrow focus of enhancing the amenity of the area, none of which might be truly representative of their area. The approach suggests a selective approach to inclusion.

We are fully committed to our proposals to enhance scrutiny of local authority interest cases and development plan departures. Amendment 192 would add nothing new to that commitment—rather, it would create an unnecessary new formal review procedure. I therefore ask the committee to reject it.

Donald Gorrie: We have had a vigorous debate. Everyone around the table agrees that we want to change the culture of planning and involve communities better in decisions that affect their future. The question is how we achieve that. The minister thinks that she and her officials have all the answers and have put them in the bill, and that no one else has any good answers. I do not accept that.

It was suggested that the amendments in the group are reactionary and adversarial, but that is exactly what they are not. All the amendments represent a serious attempt to engage communities positively in dealing with planning

applications, while removing councils' monopoly on deciding on such issues.

Communities can be divided in their views, but it is quite possible to indicate to ministers the different views and the weight of opinion on either side of the argument. It was suggested that my definition of a community is limited, but earlier in stage 2 I lodged a reasonable amendment that would have required councils to set up local planning forums, which the minister rejected, as she rejected all 25 of the amendments that I had lodged up to then. She has rejected more of my amendments today. Like a poor batsman, I look forward to the day when I break my duck.

My amendments adopt a sensible approach. Patrick Harvie asked why amendment 165 would require developers to give reasons for a proposed development under certain circumstances. A developer might have a legitimate point about the development plan being out of date. Things might have moved on and the proposed development might offer a better approach. It is taken for granted that any development is intended to make money for the developer, so developers would not have to say that. However, they could explain how the development would benefit the community.

On amendment 170, the point of giving councils the power to decline to determine an application if there has been inadequate consultation is to ensure that consultation is adequate. The developer would be told to go away and consult properly. As we know, some developers are good at consultation and some are bad. Much consultation is inadequate and it should be better.

Amendments 173, 191 and 192, which would create a review process, all have merit and I hope that the committee will support one of them, despite the minister's disapproval. The systems that they propose would not be overly bureaucratic; they would merely engage the community properly in the process.

The minister was right to say that such things cost money. Democracy costs money. Genuine local democracy, which we all want, is difficult to achieve, and it demands consideration of what people think and whether they have been briefed properly so that they can take a sensible view. That needs money, which must be supplied. We will not create a system just by passing a bill; we will do so by changing the culture and supplying enough money to enable the new culture to work. I hope that we can achieve such a culture change.

I press amendment 164.

The Convener: The question is, that amendment 164 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Home Robertson, John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Petrie, Dave (Highlands and Islands) (Con)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 164 disagreed to.

The Convener: We have made slow progress through the amendments, because we have had long debates on substantial issues. I hope that we make faster progress at next week's meeting, or stage 2 will be very lengthy. As it is about 1 pm, it is appropriate to close the meeting. I thank the minister and her officials for attending.

We will return to our consideration of the Planning etc (Scotland) Bill next week. Amendments to sections up to and including section 26 should be lodged with the committee clerks by 12 noon on Friday.

Meeting closed at 13:01.

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