



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

**DRAFT**

# Local Government and Communities Committee

**Wednesday 28 February 2018**

**Session 5**



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Pàrlamaid na h-Alba

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**Wednesday 28 February 2018**

**CONTENTS**

	<b>Col.</b>
<b>PLANNING (SCOTLAND) BILL: STAGE 1</b> .....	<b>1</b>
<b>SUBORDINATE LEGISLATION</b> .....	<b>71</b>
Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2018 (SSI 2018/38) ..	71
Council Tax Discounts (Scotland) Amendment Regulations 2018 (SSI 2018/39) .....	71
Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2018 (SSI 2018/45) .....	71

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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

**7<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

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

**DEPUTY CONVENER**

\*Monica Lennon (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Kenneth Gibson (Cunninghame North) (SNP)

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

\*Graham Simpson (Central Scotland) (Con)

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

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Petra Biberbach (Planning Aid for Scotland)

Ian Cooke (Development Trusts Association Scotland)

Dr Andy Inch (Planning Democracy)

Tom Kiehl (UK Music)

Dr Calum MacLeod (Community Land Scotland)

Clare Symonds (Planning Democracy)

Beverley Whitrick (Music Venue Trust)

**CLERK TO THE COMMITTEE**

Jane Williams

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Local Government and Communities Committee

Wednesday 28 February 2018

[The Convener opened the meeting at 09:20]

### Planning (Scotland) Bill: Stage 1

**The Convener (Bob Doris):** Good morning and welcome to the seventh meeting of the Local Government and Communities Committee in 2018. I remind everyone present to turn off mobile phones. As meeting papers are provided in digital format, members may use tablets during the meeting. I am delighted to say that, despite the weather, we have a full house this morning—no apologies have been received.

Under item 1, the committee will take evidence from two panels on the Planning (Scotland) Bill at stage 1. Before we do so, I put on record the committee's thanks to all those who attended our conference on the bill at Forth Valley College in Stirling on Monday. I will not invite members to comment on it at this point, because time is tight, although we would normally put that on the public record. However, a summary of the discussions will be published. I thank everyone who attended, because we got some really useful input that will help our scrutiny of the bill.

I welcome our first panel. We have Clare Symonds, chair, and Dr Andy Inch, trustee, of Planning Democracy; Dr Calum MacLeod, policy director of Community Land Scotland; Ian Cooke, director of the Development Trusts Association Scotland; and Petra Biberbach, chief executive of Planning Aid Scotland. Thank you all for coming along and for making it through the bad weather, which has been called "the beast from the east". I thank everyone in the public gallery for coming along, too. There is a lot of interest in this evidence session, so I thank everyone for making the effort to attend.

I will allow the witnesses to make some brief opening statements. They should be around two minutes, in order to allow as much time as possible for interaction between the witnesses and members. We will start with the witnesses sitting on my left. I do not know whether Dr Inch or Clare Symonds want to make opening remarks on behalf of Planning Democracy.

**Clare Symonds (Planning Democracy):** Thank you for inviting us; we are very appreciative of the opportunity. I am the chair of Planning Democracy, which is a volunteer-led charity that

has been around since 2009. We campaign for a fairer, more inclusive planning system in Scotland. We have a community network of around 500 people, including community councils, individuals and organisations. We have regular interaction and try to provide support for each other.

I have a cold and a tickly cough, so I might have to suddenly throw a question over to Andy Inch to answer if I have a coughing fit.

Is this my opening statement?

**The Convener:** It absolutely is.

**Clare Symonds:** I had better get on with it, then.

Planning Democracy is asking for a planning system that is seen as a way of positively shaping the places that we live in. We see planning as a mechanism through which to change the way that the market delivers, to get better-quality housing and remove speculation on land and so on. We feel that the bill has possibly viewed planning as a negative thing or a problem that gets in the way of development, whereas we see it as a vital part of our democracy.

Everybody knows that one of the things that we have been campaigning for is equal rights of appeal. We think that that is a mechanism through which we can achieve a stronger, plan-led system. That is something that we really want to achieve. Indeed, across the board, a lot of people support having a plan-led system.

We are keen to overcome the lack of public trust in planning. We feel that ERA has been presented as a blunt instrument that slows things down and that it is seen as a divisive tool that polarises people. It was rather hastily dismissed as such, but we want it to be seen as a tool that can be used to design a new system, that reinforces the principle of a plan-led system and that encourages people to be engaged at an early stage.

That is all that I will say for now.

**The Convener:** You were almost bang on time, Ms Symonds. No pressure, Dr MacLeod.

**Dr Calum MacLeod (Community Land Scotland):** On behalf of Community Land Scotland, I thank the committee very much indeed for the invitation to participate in this morning's evidence session, which is on a bill that we think will be very important in taking forward the planning framework and in connecting planning to other areas of public policy in Scotland. It is very welcome that the policy memorandum talks about moving the planning process from being a reactionary process to one that helps to promote and support investment and good-quality place making.

We provided a very succinct submission to the committee, in which we focused on local place planning. We also focused on a wider set of issues that we think are important in helping to advance the planning process and to connect it to the wider agenda. Specifically, we thought about repopulation and resettlement and how they might tie in with elements of the planning process, as well as rural and urban sustainable development more widely. We also thought about the powers that we have in that area and how we can rethink and reimagine in a practical, policy-orientated way people's place in rural landscapes.

The bill's ambition of having more community engagement and consultation and a more progressive approach to the planning process is very welcome from our perspective. As a representative organisation, we look forward to discussing the various aspects of our submission within the context of the broader discussion.

**The Convener:** Thank you very much, Dr MacLeod.

**Ian Cooke (Development Trusts Association Scotland):** Good morning, everyone. I am representing Development Trusts Association Scotland, which has 255 members in communities scattered throughout Scotland. All our members are involved primarily in what I would call place making, so our interest in the bill is very much to do with how it will help communities and others to create the kind of places that people want to live in.

I say at the outset that I am certainly not a planning expert. The views that DTA Scotland put forward to the committee were drawn from our membership, which consists of communities across the country that have engaged or tried to engage in the planning process to get consent for a community-led development or to influence planning applications that they felt would impact on them.

It is probably fair to say that, from our experience of speaking to members, there is a fairly strong view that the views of communities are not sufficiently taken into account and often tend to be overridden by the plans of developers. There is an imbalance that we hope that the bill will address.

We are keen to explore some of the cross-cutting policy agendas, such as community empowerment, how the bill connects with land reform and—given that planning is very much about local democracy—how it might connect with the forthcoming local democracy bill.

**The Convener:** Thank you very much, Mr Cooke.

09:30

**Petra Biberbach (Planning Aid for Scotland):** Thank you very much for inviting me. I am the chief executive of PAS and I was a member of the independent review that recommended changes in the planning system. I am also on the board of the Loch Lomond and the Trossachs National Park Authority and I chair its planning and access committee, so I have first-hand experience of how the planning system works in practice. In addition, I am the vice-chair of the housing association Link Group.

Committee members will have read our response to the bill, so I take the opportunity to give a little more detail of how PAS operates. About 20 per cent of planners in Scotland volunteer for the organisation and, increasingly, because PAS has moved to having an agenda about place, other built environment professionals, including architects, urban designers and environmentalists, have come to work with us.

PAS is celebrating its 25th anniversary. It is volunteer-led, with more than 400 volunteers, and has three key services. In the organisation's first 15 years, the main one was an advice service, which it still has. That service is reactive, because people phone or email to ask for advice. In the past year, we dealt with about 800 cases and there were about 1,000 inquiries that were not necessarily cases because we did not ascribe them to a volunteer.

We also help community organisations that work in social rights processes and on the ground with community groups that may want to take on assets or become small-scale developers. We have considerably expanded that programme proactively over the past 10 years, and we work quite closely with development trusts and associations.

Increasingly, to address anomalies in the planning system, we work with what we call seldom-heard groups, including Gypsy Travellers—Scotland still has a system that does not provide enough sites in appropriate locations for them. We engage very proactively with young people, because one of the failures of the planning system is that too few people know that it exists and get involved only very late in the process. By working with schools, community groups and youth clubs, we have found that young people are very ready to be involved in the place agenda. Last month, we launched the youth volunteer programme and 200 people have volunteered.

**The Convener:** We appreciate everyone's opening remarks. We will move straight to questions.

**Jenny Gilruth (Mid Fife and Glenrothes) (SNP):** Good morning. The legislation proposes a

local place plan as a new feature of the planning system, and LPPs would have to have regard to the local development plan and the national planning framework. Is the requirement that local councils must have regard to LPPs sufficiently robust?

**Dr Andy Inch (Planning Democracy):** It is a weak mechanism. Local place plans sound rather like neighbourhood plans, which have existed in England since around 2010 and are, along with the local plan, part of the statutory development plan, which gives them greater weight in decision making. An odd feature of the planning systems in Scotland and England is a gap between an indicative plan and subsequent decisions, which do not have to follow the plan if other material considerations indicate otherwise—I am sure the committee is aware of that. That means that the aspiration for a plan-led system can be difficult to achieve.

A risk of a weak status for local place plans in decision making is that communities and others can invest hundreds of hours and huge amounts of voluntary time and effort into producing the local place plans, only to find that subsequent decisions broadly disregard their provisions. That has happened in some celebrated cases in England recently, despite the stronger status that neighbourhood plans have compared with what is proposed for local place plans. There is concern about asking people to invest time and effort in a process without there being any guarantee that there will be any accountability for the decisions that are subsequently made.

Local place plans could be a very positive way to engage people early on, but you need to think about what will happen at the end of that process and how those plans will be implemented.

**Ian Cooke:** Local place plans are not particularly new. Communities up and down the country have done variations of them for some time. In our experience, there is little evidence of planning authorities recognising or giving any weight to those plans, so we are concerned that there should be a clear link between local place plans and the statutory planning process. We are very supportive of the proposal for local place plans, but they will achieve very little unless they are accompanied by a clear statement about their purpose and status.

Some of that might be done within statutory guidance, but we think that there is a way to evolve local place plans so that they have criteria. Depending on what communities want to build into their plans, there will be a legal consequence regarding what the planning authority must do to acknowledge that and respond to it.

**The Convener:** Thank you.

**Jenny Gilruth:** I have a brief supplementary question.

**The Convener:** Before you ask it, I will just check whether other panel members want to come in and answer the question.

**Jenny Gilruth:** Sorry.

**The Convener:** No—my apologies for cutting across you, Jenny.

Dr MacLeod, did you want to come in?

**Dr MacLeod:** Yes. Thank you very much, convener.

We reiterate and emphasise that local place plans are a welcome development as regards the decision-making infrastructure of the planning process and how it connects to wider issues. As colleagues have already said, it is very important to ensure that there is a clear connection between local place plans, their purpose, how they are resourced and what they are designed to achieve, and the development plan and the wider framework in that context. It is important that there is a link that is clearly achievable and capable of being implemented in practice. It is an opportunity for local communities to have a stake and a voice, which are sometimes airbrushed out of the planning process, in deciding what should be developed and moved forward at local level. The local place plan is a useful mechanism in that respect, but there needs to be a connection with the local development plan that is clear within that context and timetable.

**The Convener:** Petra, do you want to add something?

**Petra Biberbach:** Yes. As it currently stands, the local place plan system is too weak. We want to see a much stronger duty. If we are to have a plan-led system, it has to cascade up as well as down. The local place plan is a key driver in changing the current planning system and in affording everyone in the community the chance to come together to plan for their place. Therefore I agree with the comments about better alignment with other policy formulations such as the Community Empowerment (Scotland) Act 2015 and the Land Reform (Scotland) Act 2016.

We are currently consulting on a socioeconomic duty for local development plans, which will have to fit in. The discussion around what we need from local place plans must be had at a very local level, with everyone involved. It has to be given proper status, so that the approach does not become tokenistic. Furthermore, it needs to be aligned with the local development plan, which, as we know, works to a 10-year cycle. A regular update of the local place plan and a regular conversation with all the different drivers and communities within that will probably be very important.

That is unlike the position in England, where the system has not worked or has worked only in certain areas but has been given very little credence. In Scotland, a different system is in front of us, so we can drive something very new here.

**Jenny Gilruth:** I want to go back to Calum MacLeod's point. In your submission, you say that there is an associated issue on costs and the support that will be required to develop plans. I suppose that there is also an issue of community capacity. Ian Cooke, in your submission, you point to local place plans working well when there is a sense of genuine ownership among local people. However, not all communities start from the same base level or have the same buy-in and engagement. What are the panel's views with regard to, for example, poorer areas not engaging with the process or feeling that they do not have the capacity to do so because they might not have done so in the past? Does the legislation, in its current form, disadvantage them?

**Dr MacLeod:** The levels of capacity that different communities might have in relation to responding to the challenge and the opportunity of local place plans are an important point to raise. It is very important that communities in that position have or are provided with resources to enable them to have a say and the capacity to shape the process and what will be in the place plans. Support from various sources—from the Government or elsewhere—should be part of the capacity-building process, and different partnership arrangements will need to be looked at very carefully to see what the optimal solutions might be. Clearly, it is unrealistic to expect communities that might have different levels of capacity to be able to engage unless they have support to do so. That is not a reason—it is quite the reverse, in fact—for those sources not to ensure that communities have that opportunity and that, from the bottom up, what communities' aspirations are for place making fits into the broader framework. Community Land Scotland thinks that that needs to be driven forward and hard wired in the bill.

**The Convener:** Do you want to comment, Mr Cooke?

**Ian Cooke:** Our experience is that a lot of disadvantaged communities are involved in trying to improve their communities; such activity is not restricted to higher-capacity communities. I appreciate that disadvantaged communities might require additional support to do that, but there is definitely an interest.

The key is for communities to have anchor organisations, if there is no development trust, for example. A lot of disadvantaged communities have locally controlled or locally led housing associations, which are well placed to provide a

key role in the production of and support for local place plans.

I accept that resourcing is crucial. The approach will not work unless it is sufficiently resourced. We perhaps need to reflect the particular needs of disadvantaged communities in how we make financial resources and technical support available.

**Petra Biberbach:** Many areas have local planning outcome agreements. If we are moving towards greater alignment between spatial planning and community planning, I suggest that, on a practical level, there could be some alignment between the budgets of community planning partnerships and spatial planning departments, so that people work together on the ground.

Capacity building is vital. It is important for the very communities that do not feel that they have been given a voice in the past to be much more empowered.

**Andy Inch:** I very much agree that the aspiration to join things up at a very local level with community planning and other processes is the right one. There is a challenge, in that the resource implications of the capacity building and work that would be required to achieve the aspiration are massive.

I think that the financial memorandum suggests a cost of about £13,000 per local place plan—my memory is not great, and I might be wrong. I think that the figure has been borrowed from research by Locality on the neighbourhood planning process in England. I understand from speaking to colleagues who study the neighbourhood planning process that the figure is very much at the low end; a lot of neighbourhood plans have cost upwards of that, and some have come close to £100,000. In addition, local authorities in England are given at least £20,000 per neighbourhood plan, to provide support to the communities that are producing plans. None of that seems to have been costed into the current proposal. That will reduce capacity.

Another distinctive feature of neighbourhood planning in England is the very variable geography. It is typically happening in places that are much more socioeconomically wealthy and where there is higher capacity; it is not happening in other places. If Scotland does not want to reproduce that kind of geographical variation, we need to think about proactive mechanisms to avoid it.

**Monica Lennon (Central Scotland) (Lab):** I remind members that I am a chartered member of the Royal Town Planning Institute.



I want to follow up Jenny Gilruth's questions. Under the bill, community councils or other community bodies will have the power to produce a local place plan. Is the scope of the power correct? In its written submission, PAS said:

"PAS would suggest that Community Councils, as the only community group with a statutory role in planning, should be required to take a lead role in any Local Place Plan being prepared in their area".

In my region, there are big gaps in community council coverage. In areas of Scotland where there is no community council, might other bodies be better placed to drive the local place plan process?

**Petra Biberbach:** There are two parts to the response to your question. On one hand, you are right to say that community council coverage is quite patchy; community councils are struggling in many rural areas, and there is an ageing membership profile. On the other hand, community councils are the only democratically elected body at local level, in the pure sense. They are rooted in the kind of function that we are talking about, which gives them their credibility, to some extent.

Having said that, I would not say that it should be exclusively community councils that take on the role. We all need to work much more to empower more community groups to work together. Development trusts have a big role, as do young people, and there are many amenity groups. However, if someone has to drive the work forward, it must be an elected body, that is, a community council.

We stressed in the planning review that the role of the community councils should be extended to a statutory function in the development plan making. Unfortunately, that suggestion was not taken forward, but that would be a good opportunity to strengthen the role of community councils further. However, we are where we are. It would be good to have not only a lead body but a duty to include everyone in the community.

09:45

**Monica Lennon:** Does Planning Democracy have a view on that?

**Dr Inch:** We broadly agree. The role of community councils is very variable across Scotland. That level of democracy has not been particularly well invested in across the country over time, which makes things very difficult.

In relation to local place plans, I am very interested in thinking about the local anchor organisations and institutions in local communities. The intersections with community empowerment agendas and local democracy agendas, as well as

where we can vest some kind of institutional capacity that remains in communities, are issues for the committee to think about. In disadvantaged communities in Scotland, regeneration funding, for example, has been project based. A project arrives, organisations are set up, they run for the length of time of the project and then they disappear. A continuing institutional or organisational capacity has not been embedded at that level. That would be the ideal place to vest—whether it is community councils or something else—the local place planning process.

**Dr MacLeod:** The question of what types of organisations might be engaged in that process and have a lead role in the local place plans is critical. Andy Inch is right that the role of community councils is very important but, in some senses, that role has been challenging, given the hollowing out of their functions and capacity in some instances. There is certainly some merit in thinking about other organisations that might be able to contribute to, or lead, the development of the local place plans.

In that context, community landowners are one type of organisation that might have a contribution to make in that capacity—not least because, in contrast to other types of land ownership organisations, they have a democratic, accountable role to play in the process, in terms of the way in which they represent their memberships and the communities in which they are located. Different organisations, such as community landowners, could play a role in linking the appropriate organisational structures with a democratic mandate through community accountability.

**Ian Cooke:** DTA Scotland certainly wants that role to be extended beyond community councils. We should look at which organisations drive local place making, and ensure that they are eligible in certain respects. Under the Community Empowerment (Scotland) Act 2015, community bodies are described in terms of a certain range of characteristics, including democratic accountability. A group that ticks those characteristics can access various community rights, so I want something along those lines to be produced to determine which community bodies are able to initiate and develop local place plans.

**The Convener:** Lots of members want to explore the issue further, but I have a question. We are specifically talking about the question that Monica Lennon raised of which anchor organisations, such as community councils, could drive this agenda forward. However, the question is not an either/or. In my area, a community council is as representative as it can be, given that there are rarely elections to elect community

councillors. There is a democratic opportunity, but not much voting goes on—let us be honest.

We have formed a regeneration forum and undertaken a mapping exercise in which we have invited any organisation that we thought might be a community stakeholder, including housing associations, seniors forums and local colleges, to meet round one table every two or three months and start talking about local place planning and what that might look like. The question is not an either/or. I see nodding heads, but I will not put that as a formal question.

Who should do the mapping exercise across our communities, so that we can find out where the black spots are? The Big Lottery Fund had to do an exercise in Royston, in my constituency, because people were not applying for lottery funds. The Big Lottery Fund identified where the black spots were in relation to community planning, community empowerment and community activity. Should local authorities have a duty to identify where the weaknesses are in community resilience and drive forward work on that? If we wait for communities to do it, it might never happen. It might be in statute, but it might just never happen.

**Petra Biberbach:** It is quite an interesting point. Communities are different and if we are too prescriptive, we might miss some opportunities. For example, the community on the island of Rum was trying to create its own place plan through a development trust. It came to us, we helped it, and Highland Council adopted the plan as supplementary planning guidance, which was great, and the community can now grow. There are other practical examples like that, but many other communities do not come together in that way and do not feel the need to do so. I suppose that there is some duty on local authorities to assist in finding a road map. However, there are plenty of communities out there that have produced the equivalent of a local place plan, and south Glasgow is one of them.

The message should therefore not be that some communities have to or do not have to produce a place plan. There needs to be some flexibility around that.

**The Convener:** Are there any other thoughts on that?

**Dr MacLeod:** I am glad that you mentioned mapping, convener, and I hope that we will come back to that in other contexts later in the evidence session. As Petra Biberbach said, flexibility is key and the onus should not be on a particular organisations to focus on issues and push them forward. Of course there is a role for local authorities, but there is also a role for other organisations, as she said, to help shape their own

aspirations for places. That has to be balanced out.

**The Convener:** Are there any other comments before I let members back in?

**Dr Inch:** It is also important to think about local place plans as one tool among many for local place shaping. The interesting question for communities that are interested in particular issues is which tools are the most appropriate for them to use at different points to achieve what they are interested in. It is not the case that a local place plan is needed everywhere, but it is important to think about presenting a local place plan in a way that makes the tools accessible, whether that is in relation to community empowerment, community planning or things that come through planning acts. At the moment, that picture does not come together for a lot of people, which is a challenge.

**The Convener:** I will bring in Petra Biberbach and Ian Cooke, and then I will let some members come back in with other supplementary questions on the matter.

**Petra Biberbach:** I fundamentally disagree with seeing a place plan as a tool for engagement. We have tools such as the place standard, for example, to drive a conversation. If a place plan is to be enacted properly and be part of the plan-led system, it is more than a tool for people to talk about their place and have an aspiration and vision for it.

**Ian Cooke:** It makes sense that local authorities be responsible for mapping where there are gaps, cold spots and so on. However, the question is about where and how those cold spots might respond. There has to be a bottom-up approach from communities that want to do something. The issue is about how communities are inspired to do that, how they are supported, how they are encouraged and how they are nurtured, rather than about trying to impose something from the top.

**The Convener:** I will allow Monica Lennon back in shortly, but I will first let in others who have supplementary questions on the same point, starting with Graham Simpson.

**Graham Simpson (Central Scotland) (Con):** I think that all the witnesses agree that the bill does not have enough teeth on local place plans. The bill states that councils only have to “have regard to” local place plans, which is meaningless. I think that the committee needs to hear what ideas there are to sort that out. I think that Petra Biberbach said that maybe it could all be done when the local development plan is produced. Should there be a requirement for councils, when they are producing local place plans, to reach out and engage with communities, and then to demonstrate in the

evidence report that they have to produce that they have done that job, have asked for local place plans to be produced and have helped people to produce them at the time of producing the local development plan?

**Petra Biberbach:** We are talking about local development plans moving towards a 10-year cycle, and there are opportunities within that to produce local place plans on a regular basis, because communities themselves are dynamic as well.

The plans should come together right at the start. The best starting point in driving local development plans is for them to be informed by local place plans, so there should be a fusion. People will say, "I've identified these gap sites and seen these empty homes and I want to do something with them," and they should be listened to. The intelligence and information that local communities carry can only benefit local development plans.

**Dr Inch:** A couple of things are clear. First, the local place plan should be part of the statutory development plan for an area, so when a local place plan is approved, it should become part of the local development plan.

Secondly, there is an issue at the end of the process, as I mentioned earlier. Communities will invest time and effort in producing local place plans, but there is no guarantee that decision makers on subsequent planning applications will pay any heed to those in their decision making. There has to be a strong case for those communities to have a right of appeal where decisions are contrary to what has been agreed in the local place plan. Having gone through the process, they become, in effect, the party that has produced the plan, so they should have a say in subsequent decisions. That will give them teeth and be an incentive to ensure that the local place plans are implemented.

**The Convener:** Are there any other comments on that, or is there general agreement? We will have to move on beyond local place plans in a moment.

**Dr MacLeod:** I have a brief comment to add. The key thing about the link between communities and local place plans and the broader local development plan is that the local place plans should be front loaded so that the community's voice is listened to in the first place and formally connected to the local development plan. That link must be there. If we have that, we will not necessarily have to pursue a third-party right of appeal with regard to how that works in practice. Front loading the local place plans is critical in that context.

**Petra Biberbach:** It is also about the psychology of planning. At present, people know that they do not necessarily have to participate at that stage because they may have another bite later on. We want to see much more engaged communities, with engaged individuals creating local place plans at the earliest opportunity and knowing that there is an opportunity for them to be involved that is meaningful and not tokenistic.

**The Convener:** I see lots of hands going up, but members have follow-up questions on some of the comments that have been made. Mr Cooke, you have not spoken on the matter yet, so I will bring you in. I apologise that I will not bring other witnesses in at this point.

**Ian Cooke:** We see local place plans as being very much part of community empowerment. The idea that communities can proactively use them when it is right for them in order to forward their ambitions is crucial.

We have to be careful. It is important that, when local place plans are produced that meet the criteria, they are listened to and taken into account but, again, if it is just part of a fairly top-down, bureaucratic system, we might flatten the activity, energy and enterprise that are already bubbling away in communities.

**The Convener:** Andy Wightman and Kenneth Gibson want to come in and ask wee questions.

**Kenneth Gibson (Cunninghame North) (SNP):** As we have spent some time on the matter, I will hold my fire, convener.

**The Convener:** Okay.

**Andy Wightman (Lothian) (Green):** One of our problems is that we have gone out and spoken to communities and, like the witnesses, folk have said that local place plans could be a great idea, but our challenge is to recommend to Parliament whether they are a good idea or not. As they appear in the bill, they are weaker than what is provided in the English system. I suppose that the question for us is, if they are to be strengthened, how that will be done. Andy Inch said that they should be part of the statutory local development plan. Do others agree?

**Petra Biberbach:** There needs to be a duty. We cannot have what we call a proper, front-loaded system—that is a jargonistic term, but I think that we all know what we mean by it—and proper community involvement and then say, "Well, we can leave it at any opportunity." There has to be meaningful engagement, and that means that you have to give it teeth. People in the community need to know that, if they spend weeks and months assisting and doing the work, their views will be carried forward and taken into account. It follows that it has to be a plan-led system and that,

as we look at the NPF, we see local place plans as being part of that—and there has to be a duty.

10:00

**The Convener:** Is there a difference between having a duty to consider local place plans and making them automatically part of local development plans? They are two separate things, are they not? It is about how they rub together or complement each other.

I want to be clear what the witnesses are saying. We have not defined what a community is or what the threshold is. There have to be referendums for neighbourhood plans in England, but we have not defined any of the criteria. Are the witnesses saying that a local place plan that is approved by a local area should, no matter what, automatically form part of the development plan, or that there should be a duty for the development plan to take account of it materially and meaningfully?

I want to ensure that we are talking about the same thing when the committee makes recommendations on that. What are you saying when you talk about a duty, Petra?

**Petra Biberbach:** I mean that the people who prepare the local development plan must understand and be fully aware of what the local community wants. We have a definition of neighbourhood. We have a rough geographical definition for community planning partnerships. The local place plan must be strong and the local development plan absolutely must take account of it. It forms part of the plan-led system cascading up the way.

**The Convener:** That is definitely an answer—I was going to be rude and say, “I think that that is an answer”—but, as my deputy convener just pointed out to me, the important question is: should the local place plan have the same status in law as the development plan or should there be a dispute resolution system, for example, for when the development plan does not match the local place plan? It is one thing to have the duty, but automatically making the local place plan part of the development plan is another thing entirely.

I have my own views on that, but I am keen to know what the witnesses’ views are. Petra, I am trying to push you on this: should the local place plan automatically form part of the local development plan or should there be a stronger lever for that to influence the local development plan? Should it, for example, be a material consideration for planning applications if something goes against the local place plan? What do we mean by saying that we need something stronger than “have regard to”?

**Petra Biberbach:** It should be the latter. It is very important that it is meaningful. If you want to drive more democratisation of the plan-led system, the local place plan must be a material consideration in the development plan making.

Having said that, we should not forget that, as we move into a more collaborative system, we should not see the local authority—the plan-making authority—on one side and the local community on the other. We should work together so that everyone is aware of what is proposed and of what is happening so that it goes seamlessly into the local development plan. I want the strongest possible commitment to be given to local place plans.

**The Convener:** I promise that I will let Dr Inch and Clare Symonds back in in a minute. Their organisation said that the local place plan should just be part of the development plan, whereas PAS seems to say that it should be a step removed from that but should influence and feed into the development plan. I do not want to put words into your mouth, Petra; I want to be clear about what you are saying. If you are content with that, I will ask Mr Cooke or Dr MacLeod what they feel about it.

**Petra Biberbach:** No, I am saying that it should be stronger than that. It should be part of the local development plan. It has to be a material consideration of it.

**The Convener:** So it should be in the local development plan.

**Petra Biberbach:** If you prepare something at the local level, it follows that it has to be part of the development plan if you want it to be meaningful and have a proper statutory role.

**The Convener:** That is a yes. You agree with Planning Democracy, then.

**Petra Biberbach:** Yes.

**Ian Cooke:** As you suggested, convener, there definitely needs to be a stronger lever beyond what is in the bill. The statutory guidance needs to provide criteria that clarify the different levels of sophistication that local development plans could take and the different levels of legal status would attract, depending on the criteria that the local development plan uses.

We are looking for something organic. It is much more about a power. However, once the local place plan is produced, if it meets the criteria, it must be reflected within the local development plan.

**The Convener:** If it meets the criteria.

**Ian Cooke:** Yes.



**Dr MacLeod:** We are clear that the local place plan needs to have a formal and clear link into the local development plan and to be sure to tie into whatever criteria are in that, as Ian Cooke said. There should be a clear formal link between what the local place plan does and how that fits within the local development plan.

**The Convener:** Okay.

**Dr Inch:** It would be nice to move the discussion beyond local place plans, because there is a huge amount in the bill. It is very important to clarify some things. Everybody agrees that front loading and a plan-led system are good ideas. As I understand it, if something forms a part of the development plan as defined in statute, when it comes to looking at planning applications, that simply means that it is a material consideration that has somewhat more strength than others in the decision making. To paraphrase it, the law says something to the effect that the decision will be in accordance with the plan unless other material considerations indicate otherwise. We are still talking about a relatively weak mechanism.

One of the problems in Scotland when we talk about a plan-led system is that we do not have one, because decisions do not have to agree with what is in the plan when other material considerations indicate otherwise. I do not see anything in the bill that addresses that issue, which the committee might be interested to consider if people are really serious about a plan-led system. Until that issue is addressed in a more fundamental and meaningful way than has happened in any of the deliberations up until now—as far as I am aware—I do not think that you can talk very strongly about a plan-led system. There will always be that scope for the decisions made at the end of the process not to be in accordance with what is in the plan.

**The Convener:** A degree of patience is needed. We are trying to exhaust the issue of local place planning; I assure you that once we do that, we will move on to a myriad other things. We just have to be crystal clear about what witnesses have said when we come to form our opinions.

**Dr Inch:** It is important to clarify in strict legal terms the nature and weight of the development plan and what it means to include something in it.

**The Convener:** I appreciate your outlining that, Dr Inch, but we are still dealing with local place planning. We will come to that issue.

If there are no other comments about local place plans, I will invite Monica Lennon back in.

**Monica Lennon:** I just want to wrap this up, convener. I take the points about whether we are trying to develop a plan-led system or not. About 10 minutes ago, Petra Biberbach was talking

about fusion, with local place plans being proposed alongside the delivery of a local development plan. As a former practising planner, that seems a bit odd to me. Trying to promote a plan-led system while there is a local place plan that has the status of a material consideration will just create tension.

The convener mentioned some of our external engagement. At an event in Motherwell that we had, John McNairney, the chief planner, addressed Lanarkshire community groups, referring to the shift to a cycle of at least 10 years for local development plans and suggesting that the proposal of local place plans could indicate that the local development plan was in need of an update and a refresh. Is a local place plan an indication that the local development plan is out of kilter with local need and what local people want? If the chief planner is saying that local place plans might be an indication that the local development plan needs to be refreshed, does that not sound alarm bells about moving to a 10-year cycle? It might not be the best move if we are trying to strike a balance between buy-in and involvement from the community and certainty in the plan.

**Petra Biberbach:** I would see it as something that gives democratic renewal. We want to move to a 10-year plan, because we in Scotland have been overwhelmed by constant plan preparation. We put down one plan and then have to start the next cycle, and that process can take away some of the vision, aspiration and delivery that we need.

I think that a local place plan has to be very much part of the local development plan process, as it starts with what the community wants. It is also very helpful, because one thing that we should not forget is that a lot of the local development plans are signed off by the locally elected members. As a result, there will be much better communication, with local place plans being produced by the local community on the basis of their aspirations and vision for the place and then forming part of the local development plan process.

It is true that, if new sites emerge, changes will have to be made during the 10-year period, but at the moment, we have changes within a year. If something needs to be addressed again, we have the opportunity to go back with the community, and that fosters a new kind of dialogue and engagement that we have not seen before now.

**Monica Lennon:** If the idea is that the local place plan is a really good way of informing the development of the local development plan, I should point out that South Lanarkshire, where I live, is a big local authority and that, at neighbourhood level, we would be talking about dozens upon dozens of local place plans if we tried to get things at the right scale. It could quickly

become quite expensive if all these community councils and groups were to bid for funds for a local place plan.

As far as front loading is concerned, is there something missing in how we do local development planning, and do we need to direct resources to that instead? Perhaps the witness from Planning Democracy would like to address that point.

**Dr Inch:** We are talking about various changes to the local development planning process such as the move to a 10-year cycle, the loss of the main issues report and the watering down of the very positive suggestion of a gate-check process that came out of the review panel and which could have provided a very interesting deliberative opportunity to involve communities at the front end of the local development plan process. However, it does not look as though things are being taken forward in that way.

It looks as though the changes that are being introduced will make the local development plan less accessible to people. I am not sure that the rhetoric on empowering communities is being followed through in the mechanisms and the ways in which the local development planning process will change. For a start, where is the front end of that process for people to engage with and input into?

There were losses following the 2006 reforms. There is a lot less examination and, indeed, we have less of an opportunity to examine local development plans before they are approved. The local development plan, the capacity for people to engage with it and where those opportunities lie are all things that need to be looked at.

**The Convener:** I must ask you to keep your powder dry on that, because we are now moving on to development planning. First of all, though, I just want to check whether you think that the promotion of local place plans is a good thing. A nod of the head, a quick yes or no or even a shrug of the shoulders would be fine. I do not want it to get lost in all of this. Is it a good thing?

**Petra Biberbach:** It is vital if you want to change things.

**The Convener:** Do you think that the provision has to be strengthened?

**Dr Inch:** The devil is in the detail.

**The Convener:** But is there a devil in this? Let us be careful with words here. Are local place plans a good thing? Should they exist?

**Dr Inch:** In principle, yes, but a lot will depend on the ways in which they are—

**The Convener:** Hold on to your optimism for a second. I do not want to put words in your

mouth—I just want to be clear. You think that local place plans should exist, but are we saying that they should be strengthened and made more meaningful for communities? I see everyone nodding.

So we have to go further than just having regard to local place plans in development planning. As far as I am concerned, the debate has moved on to the question whether you lift and shift and put it straight into the development plan or look at whether it might influence the development plan in a powerful and meaningful way. Is that a useful summary of where we are in relation to local place planning? Again, I see everyone nodding.

**Petra Biberbach:** We talked about community engagement 12 years ago, but we still do not really have it. If we do not want to repeat the mistakes of 2005 or 2006, the opportunity is now. We really need the committee to tease out the issues to ensure that the local place plan can work well.

**The Convener:** That was really helpful.

**Alexander Stewart (Mid Scotland and Fife) (Con):** We have already touched on some of this, but I want to try to expand things a bit and consider the potential removal of the requirement to produce a main issues report. What impact would that have on community involvement?

**The Convener:** Who wants to talk about that? I see that Dr Inch had his hand up first—the others need to be quicker next time.

**Dr Inch:** As I understand it, the idea behind the main issues report, which was introduced in the Planning etc (Scotland) Act 2006, was very much in accordance with the principle of front loading and the desire to get people engaged early, before a draft plan was produced, to ensure that they were involved in shaping the issues that would influence that draft.

In practice, that has been difficult, and the main issues report has probably not realised those aspirations. It is difficult to get people involved in it. A very positive suggestion that came out of the review panel of which Petra Biberbach was a part was that of an evidence gate check. If we go back 50 years, the Skeffington report in 1969 was the first time that public participation in planning got mentioned. One of the things that that committee was interested in was front loading, but the fact that we are still having the same discussion 50 years on suggests that we have not cracked that.

Another suggestion was to get people involved as far as possible in producing and deliberating the evidence that would form the local plan. At the moment, the gate check looks as though it will be a rather technocratic tick-box exercise, looking at evidence handed down from on high, instead of a

chance for people to really deliberate the kinds of evidence that should be taken into account in planning.

There is a need to get people involved at the initial stage before a draft plan is produced, and there is scope to discuss the expansion of the gate check and how it could be made into a more deliberative and engaged process. It would be really interesting to discuss that.

10:15

**Petra Biberbach:** I welcome the move away from the main issues report, because, up and down the country, it has not worked. Most local authorities simply produce something that they send out to consultation, but that is not participation; it is an invitation to the people who already know the system to be informed and get involved. The local place plan is much better and stronger and replaces the early consultation on the main issues report, which we know has not worked because, 10 or 12 years on, the vast majority of people do not know that there is such a thing as the planning system.

**Dr MacLeod:** It is fundamentally important for communities to have the capacity and space to engage in the process by identifying the main issues and where they sit within the planning process. I am really interested in what Petra Biberbach has to say about what seems to be an appropriation of expertise on the part of professional organisations—professional planners and others—in shaping the identification of the main issues. It is important to ensure that we have a balance that helps enable communities to identify and push forward what they think are the clear issues in their places. That ties in to broader and very important issues about expertise and the appropriation of knowledge in landscape planning, wild land mapping and how we sit within the landscape, and how those main issues are communicated and mediated ties in with our submission.

**Ian Cooke:** As I am not a planning expert, I do not know the details, but the principles and issues that I would flag up are that it is, as Petra Biberbach has said, crucial to involve people as early as possible in the processes. It seems strange that a lot of evidence that could be fitted into the planning system is completely ignored at the moment. A lot of the plans that have been put together by communities are more than just spatial plans; they look at economic, social and environmental development, and that information could fit into plans. On the one hand, there is frustration that fewer people are involved in the planning process, but people in communities are doing things that could be brought across. That brings us back to local place plans; there is a lot of

information that could be drawn into the development of the plan.

**Dr Inch:** I broadly agree, although I am not sure how local place plans could replace the evidence gathering for the local development plan, as Petra Biberbach has suggested. If the area has a very variable geography, you will not get take-up across it. The local development plans deal with different geographical areas, and you will need to think about two separate and distinct processes and not see local place plans as a replacement for the main issues report and that early engagement in the local development plan process.

**The Convener:** Could that replacement happen only where the two plans were aligned and dovetailed with each other?

**Petra Biberbach:** There would always be a transition period. Phasing out the main issues report will take some time. I alert the committee to a good Scottish Government handbook that was created by NHS Scotland and Architecture and Design Scotland on the place standard tool, which gathers a lot of information about local places, engages local communities in thinking more widely about wellbeing and how people feel about a place and captures data that local authorities can access to plan for the future. In this digital age, there are lots of ways of gathering information about local communities and neighbourhoods.

**The Convener:** We are still dealing with the main issues report and the question whether it should be removed. I want to stay focused and hear the panellists' feelings on that. Petra Biberbach was fine with it, but I wonder what Dr Inch's views are. Would you keep it, Dr Inch?

**Dr Inch:** No. I am very interested in how you would adapt, develop and augment the proposed gate check and turn it into a deliberative opportunity for people to engage.

**The Convener:** That is helpful. What you are saying is that it is fine for the main issues report to go, but we must really beef up the gate check and make it more than a bureaucratic tick-box exercise.

**Dr MacLeod:** That is absolutely critical. We should not have any technocratic exercises with the process being shaped from the top down; instead, the process needs to be deliberative and enable communities to have a voice and to shape the process. Ultimately, communities have a voice and an awareness of the main issues that affect them. They just need the capability, routes and mechanisms to enable them to shape the process.

**Clare Symonds:** With regard to alignment, which has been mentioned, local place plans might have to align with what is in the development plan. With the national planning

framework becoming part of the development plan, that will create tension in planning, whether it be top down or bottom up, and that needs to be bottomed out. We have asked that you retain the national planning framework as a national level document, because there will be a difficult tension between them otherwise.

**The Convener:** I promise you that we will get to that issue, if I move things on a bit quicker.

As there no other comments about the main issues report, Alexander Stewart will finish off his line of questioning.

**Alexander Stewart:** I want to tease the gate check issue out a bit more. Dr Inch has identified that it has the potential to be used quite extensively and has pointed out that the community involvement in the process is vital. What evidence should the community take into account? What should we be looking at if the gate check is to be a quite well-advanced mechanism that can add benefit to what we are trying to achieve?

**The Convener:** I love it when witnesses look at one another and no one volunteers to answer. [Laughter.]

**Dr MacLeod:** I will volunteer, convener. Many issues could be taken into account with regard to evidence, but I would highlight affordable housing need, the scope to increase the population in urban and, in particular, rural contexts, services and various aspects with regard to types of development. Those kinds of things express community ambitions and objectives that have a clear relation to their sustainable development and cohesion. That is a pretty fundamental part of it, but there are others. It is all about enabling communities to have a voice and the capacity to express it.

**The Convener:** If witnesses want to answer a question and are trying to work out who is next to speak, I would say that the rule of thumb is that the first person to look at me gets to answer.

**Dr Inch:** There is also a question about what form the gate check might take. For example, we would be interested in the possibilities of having a citizens' jury. Different models of deliberative innovation could be brought in to enable different forms of hearing and taking evidence. As has been pointed out, there are existing plans and strategies and huge amounts of evidence that could be brought into all this, and people could be taken through a process of sifting and identifying priorities that would feed into the plan. There are many different models and ways of organising this that would be a lot more interesting than just going through a checklist of existing statistical evidence, but you have to try to enable people to engage with that.

**Alexander Stewart:** People would probably engage much more and be much more alive to the whole process if they saw it as an opportunity to participate.

**Dr Inch:** I would hope so.

**Petra Biberbach:** The gate check was proposed in the first instance to allow greater community sign-off of local development plans. We also proposed a two-stage gate check because, if you are serious about front loading, you have to give it time and invest time in it. The beauty of the planning system is that there are many different values and vested interests, and they have to be balanced.

We also wanted to get away from the notion that a remote reporter should do the final sign-off, because this is really about driving democracy back into the local community. The gate check, with mediation as part of it to find out what the community wants, is absolutely vital. By the way, very few communities speak with one voice; there are usually lots of different communities and interests. There are also developers—be they on a small scale, as with development trusts, or on a larger scale—housing associations and Gypsy Travellers, who are never involved in the process.

We have to think very hard about how we resource all that properly. The idea behind the bill was to have a much more collaborative and inclusive approach to planning. We have to find ways of making that happen, and we have to invest time in it, too.

**The Convener:** If there are no more comments on gate checks we will move on to the next line of questioning.

**Andy Wightman:** We have had simplified planning zones—I think that there are two—but they are to be got rid of. Instead, the bill provides for simplified development zones, in which there will be a lot of up-front planning consents in relation to not just spatial dimensions but roads and infrastructure, such that the areas become, in essence, development ready and there is no requirement to apply for detailed planning consent for developments in them.

I will come on to the detail of the proposal, but first, does the panel support the principle of simplified development zones? Should they exist? Professor Cliff Hague, who will give evidence at a later date, says that the approach is the ultimate in up-front planning and that if we are doing up-front planning we should be doing it throughout Scotland. What are the panel's views on the merits of such zones? Do they have the potential to deliver better outcomes for Scotland's communities?



**Dr MacLeod:** Community Land Scotland thinks that there is merit in the approach, depending on what the zones are designed to achieve and for whom they are designed to achieve it.

Let us take the area that I represent. If a community landowner aspires to see particular types of development, whether that is affordable housing or business development, there is merit in being in a position to shape the process in ways that enable the community to fit its aspirations with the type of development that is going on. That takes us back to the point about identifying objectives. There is potentially considerable merit in a zone that is designed to contribute to development that is economically, socially and environmentally sustainable.

In that context—if I might extend the subject slightly—there is considerable merit in thinking about where, in a rural Scotland context, there is potential for development that is economically, socially and environmentally sustainable. As we suggested in our submission, that can include thinking about resettlement and repopulation of areas where there are no longer human communities.

There is the potential application of mechanisms such as we are talking about in that context, if we think about how they can help to pursue the renewal of rural Scotland at community level and balance competing interests, so that local people and communities have a clear and prominent position in shaping what happens in their community and local landscape.

**Dr Inch:** We talked earlier about the plan-led system. Zoning is the alternative to the discretionary planning that we typically have in Scotland, whereby the decision does not necessarily follow what is in the plan. In zoning-based systems, which exist throughout most of the rest of Europe, in the United States and elsewhere around the world, what is zoned in the plan legally constrains what can be built. In effect, that is what we are talking about; we are introducing zoning into the Scottish planning system. That is a potentially interesting development that is worth experimenting with.

10:30

I have reservations about the description “simplified development zones”. Why are they not just being called better planning zones? Why is it not about getting it right up front to ensure that we get the highest quality of development, engagement and consideration of environmental constraints and factors, and that we lay out zones to produce really high-quality settlements? If you allied that to other mechanisms, for example, for compulsory purchase and land assembly by public

authorities, you could begin to think about zones to innovate and produce the capacity to deliver development.

At the moment, we have a very reactive planning system in which we produce plans and then wait for the market to decide whether to make applications that will enable those plans to be implemented. The more positive and proactive zoning system could have mechanisms to ensure the implementation of those plans. However, as I say, if you are going to do that, it is important to get that up-front process right, because the plan becomes much more definitive, and if there is no proper engagement and consideration of all the factors and a real drive for quality, the plans will not work; they will sell the future short.

**Petra Biberbach:** I agree; I do not like the terminology “simplified development zones”. We want to call them “investment-ready areas” because we are talking about areas that have gone through all the discussions—there has been community buy-in, so the issue has been discussed with the community and there has been community engagement. The term “investment-ready areas” applies more widely than just to areas of land. It can also be applied to struggling town centres, for example.

We have only two such areas in Scotland, but there are hundreds in England. We need to think differently and engage up front with the whole dilemma of where and what we are building.

Area zoning would also allow us to be a bit more creative about the housing that we might want to build, so we could have more varied housing models and could perhaps invite smaller, more local developers to come forward. It is a great opportunity, and I think that we would want to see more of those zones happening.

**Ian Cooke:** If simplified development zones led to more proactive, public sector-led development, we would be supportive of them, but we do not have sufficient information about the approach to make an informed comment about it.

**The Convener:** Dr MacLeod, you do not have to speak if you do not feel the need to, but the opportunity is there.

**Dr MacLeod:** I do feel the need, if you do not mind. We have talked about the urban context, which is obviously important. However, when it comes to talking about the rural context, I note that the bill and some of the material contained in the policy memorandum are clearly urban focused. There is a lot of focus on town centres and the urban context. There is no getting away from the fact that that is important, but also important is how we conceptualise and think about the development of rural Scotland and where planning sits within that context.

If we are considering the issue from a sustainable development perspective, we need to think about how that issue sits in relation to the role that people and communities should play. We need to consider simplified development plans and our policy mechanisms and ideas in relation to rural renewal in Scotland. The planning process might play an important role in that regard, when it comes to ideas around where we want to have communities, how we want them to prosper and how that all sits together. Thinking about resettling, repopulating and where mechanisms such as simplified development might sit, among a host of other issues, is very important and worth not losing sight of not just in the broad policy context, but specifically in relation to the bill.

**Petra Biberbach:** The articulation of urban and rural is best defined through a community-owned local place plan, so that we can distinguish between the different communities and the different drivers.

**Andy Wightman:** I was intrigued by your answer, Dr MacLeod. The planning system is a spatial planning system, but you represent people who also own land and therefore can deliver. Are you saying that simplified development zones, together with local place plans and the fact that you own the land and can deliver, mean that that fusion could work for you, or are you making a broader point that, particularly in that context, simplified development zones could have a useful role to play in rural Scotland?

**Dr MacLeod:** From a community landowner perspective, the combination of owning the asset and the other things that you mentioned is an incredibly important and powerful tool in being able to develop the sustainability of a community. We have seen examples of that throughout Scotland, in the Highlands and elsewhere. I am from Harris. The West Harris Trust has brought about repopulation by delivering jobs, employment opportunities and other services. The combination of owning land and being able to manage it for the community is fundamentally important in unlocking opportunities for sustainable development. That is a critical element.

To address your second point, there is potential to think about how that mechanism can be used in a proactive, sustainable fashion elsewhere in Scotland. In the terrain that we have traversed in today's discussion, we have talked about the need to front-load processes and give communities a voice, and the practicalities of how to do that.

**Andy Wightman:** My second line of questioning is about how the power is framed in the bill. Planning authorities can introduce a scheme and third parties can request a scheme. If the authority refuses to introduce a scheme, the third party can appeal to ministers. Ministers can alter a scheme

or give directions as to how a scheme should be formulated. They can force a local authority to have a scheme.

Do you think that the balance of power is correct, given that such powerful ministerial powers are being provided to deliver what is, in essence, a local zone in the plan?

**Dr Inch:** Broadly speaking, that is one of a range of examples of measures in the bill that are quite centralising. The Scottish Government is taking a lot of new powers when we already have a very centralised planning system. The bill provides for considerably greater centralisation.

In thinking about sensible planning, we need to think about where those powers are vested. Local democratically elected authorities seem like a good place in which to vest them. There is not necessarily any need for the proposed level of central control and potential coercion to designate simplified development zones, which should be seen as a part of the local planning process.

**The Convener:** Graham Simpson has a supplementary to Andy Wightman's question.

**Graham Simpson:** The flipside of that is that if national Government decides that we need more towns, for example, the use of this method might be one way of achieving that. Councils all over the country could say, "Not here." We know that we need more building. Is it not right that Government should be able to say, "We need towns there, there and there"?

**Dr MacLeod:** The flipside of that—

**Graham Simpson:** Why not deal with my point about the flipside first?

**The Convener:** There can be lots of flip sides, but let us deal with one at a time.

**Dr MacLeod:** Forgive me.

If there is an aspiration to create new towns—there seems to be a policy need for that, and it fits in with the idea of having clear policy objectives with regard to sustainable development and economic growth—a case such as the one that Mr Simpson has identified could be made.

That is very important in relation to the rural context, too. If there was a clear public interest case to be made in relation to repopulation or resettlement for the sake of the cohesion and sustainability of rural Scotland in the north and the south of the country—the Highlands and the Lowlands—we have strongly advocated having the powers that would enable that to happen. If there was a public good interest in doing that, that should certainly happen.

There has been a lot of media attention around our submission with regard to repopulation and

resettlement. To be absolutely clear, Community Land Scotland does not advocate pressing reset on the Highland clearances. We suggest thinking about imaginative and forward-thinking ways in which we can conceptualise the planning process and policy. We also suggest thinking about the sustainability of rural Scotland and where repopulation, resettlement and all the elements that go with them might sit in practice. I am very glad that that point has been raised—thank you.

**Petra Biberbach:** We have to think about imaginatively about simplified development zones. I mentioned that we have one town-centre zone in Scotland. Currently we have more than 30,000 empty homes, most of which are in town centres. We need to find a mechanism to unlock them and to repopulate our town centres, which, increasingly, are struggling. If we think imaginatively about how we apply that, perhaps we can find a way of unlocking the potential that is already in Scotland before we start thinking about new towns. The latest statistic is that there are 32,000 empty homes, which is a huge number.

**The Convener:** Does Graham Simpson want to follow up on that before we move on?

**Graham Simpson:** I have another question on simplified development zones.

**The Convener:** We will run with that just now.

**Graham Simpson:** At the moment, simplified planning zones cannot be built or set up in certain areas, such as green-belt, conservation or national scenic areas. The bill does not specify that in relation to simplified development zones. Does the panel think that it should?

**The Convener:** Panel members are all looking at one another again. Perhaps Dr Inch would like to start.

**Dr Inch:** What we have said is that all the inputs to any designation of a zone need to be there before we can have any confidence in the mechanism. One such key input would be existing constraints and designations. Drawing the power less broadly may help to limit the remit of simplified development zones, but the alternative would be to have the situation as it is but to ensure that the inputs that go into the designation of any zone were clear. We would take those into account anyway.

**Dr MacLeod:** Frankly, there are real issues as regards designations and where the zones should be. Particularly in rural Scotland, there are also issues around wild land mapping and where that ties in with development. There is a lot to be said about wild land issues, and it is very important that we do not airbrush people out of that process—as the current wild mapping process has done—because ideas of wild land are socially

constructed, as there have been human populations and settlements in those areas. Changing that balance and getting it correct—or more appropriate—as regards the relationship with and place of people in landscapes, as well as helping to define landscapes, are very important parts of that process. That is partly what our map of no longer existing communities is designed to help move along, in policy terms.

**The Convener:** Andy Wightman's question about the range of ministerial powers in relation to the designation of such zones was quite interesting. Does the panel hope that such a power would never be exercised, as far as dictating is concerned? Are there examples of things in the planning system not working, such as local place plans being unable to influence the local development plan, or planning authorities seeming to be out of step with the needs of communities? If so, there could be a need for the Government to exercise some of the powers about which Mr Wightman understandably has concerns. Would the panel like the Government to hold such power but never have to use it if everything else worked out, or would there have to be more safeguards about when it would be exercised?

10:45

**Dr MacLeod:** In that context, it is effectively a sort of back-stop power. You get that in other areas of land reform, such as in relation to the powers to develop community ownership. The idea is that, if there is a policy aspiration within the public policy arena to achieve particular objectives, regardless of whether they involve population resettlement or whatever, and there is a community aspiration to achieve those objectives, the power that you mention would be a potentially important back-stop power. In our submission, we talk about some other up-front powers in terms of compulsory purchase and so on.

**Dr Inch:** I think that we already have a lot of those back-stop powers in relation to the ability to call in applications, recall appeals and have oversight with regard to local development plans. Generally speaking, some of that central control is okay. However, one of the other proposed mechanisms of centralisation is that the national planning framework, which will be combined with spatial planning policy, will become a part of the development plan, as we discussed earlier—the development plan will be the national planning framework alongside the local development plan. That considerably strengthens and changes the nature of the national planning framework in quite a worrying way, as it means that there will be a much more direct influence in planning decision making than currently exists.

There are questions around the back-stop powers. It seems to me that there is also a creep in the bill towards more directly interventionist powers, and that should be a matter of concern.

**The Convener:** We probably have another 45 minutes left of this evidence session—it has been quite a long session, but we want to cover every area of the bill.

**Monica Lennon:** Looking at the clock, I can see that we have been discussing the bill for about 90 minutes so far, but we have not really talked about what the purpose of the planning system is. That might be because the bill does not really say what the purpose is. I know from the written evidence that has been submitted to us that PAS and Planning Democracy are calling for the bill to be amended to include a statutory purpose for the planning system. Why do you think that it is important for the bill to be explicit about the statutory purpose of planning?

**The Convener:** The ever-reliable Dr Inch is the first to catch my attention.

**Dr Inch:** The planning system that we have is largely unchanged since 1947. When it was introduced, it was assumed that there was a common purpose in relation to what planning is, so that purpose was never included in the legislation. There have been similar debates in England around the lack of a stated purpose.

When we talk about the need for the planning system to deliver, which comes up a lot in the written evidence, there is much less discussion about what it is supposed to deliver. There is a missing element there: what do we want planning for? If we had a positive stated purpose for the planning system, that would enable all decision making to be tested against a clear idea of the kinds of positive place making and public interest purposes that planning should be serving. That could provide something really interesting to test plans against. I think that, under the 2006 act, plans currently have the purpose of contributing to sustainable development, but that applies only to plans, not to the system as a whole. I think that having a clear definition of those purposes would help to clarify how we understand planning and could create a strong public interest purpose for the system and its operation.

**Monica Lennon:** Do you agree that it seems odd that the bill does not articulate that? If we are trying to get more of the wider public involved in planning, do you agree that we must spell out the whole point of planning, what it is for and why it matters?

**Petra Biberbach:** Yes, I think that that is really important, and we have made a submission to that effect. We need to know whether planning is about sustainable economic growth, for example, or the

place agenda, with everybody having a right to participate in it. The purpose absolutely has to be defined. That will help to drive people's thinking away from seeing planning as a regulatory function towards seeing it as an envisioning process that they can be part of. We definitely need a strong statement about what the mission of planning is.

**Monica Lennon:** You were involved in the independent review, so you might have more insight into this matter than other members of the panel, but do you have any sense of why the Government has not included a statutory definition in the bill? It seems pretty fundamental to everything else that has been discussed today.

**Petra Biberbach:** To an extent, we did not make a recommendation because we were focusing on how to make the planning system better. We were interested in ensuring that there was more front-loading and that the planning system would be more constructive and more integrated with other policy areas. Since then, PAS has made a submission on how we would like the vision for the planning system to be articulated.

**Dr MacLeod:** On reading through the bill and the policy memorandum, it is noticeable that it is very process orientated. The bill does not include a vision or a clear articulation of what the purpose of the planning system is, and in our view that is an omission. Without that, when the legislation and everything that goes with it enters the broader environment, how we can expect people to have any purchase or traction in relation to how they relate to planning as a process and a policy area?

Community Land Scotland would argue that it is extremely important for the purpose of the planning process to be articulated. What is its purpose? Broadly, it is about making sure that rural Scotland and urban Scotland are sustainable socially, economically and environmentally. Communities need to be given a voice in how that process works. They need to be consulted and given an opportunity to shape their places. We would argue that we need to think innovatively and imaginatively about the balance of development and sustainable development in the rural context in particular.

In our submission, we argued that there should be a duty whereby ministers must have regard to the desirability of repopulation and resettlement in future policy. We think that it would be extremely useful to have such a provision in the bill, which could be tied in with the evolving national policy framework and other areas. Keeping front and centre what the process of planning is about and for will help us to articulate and shape a lot of what comes from that.



**Monica Lennon:** Andy Inch wants to come back in, but I have a follow-up question for Petra Biberbach. The bill tries to address performance and has things to say about how we can get better at measuring the performance of planning, but if we do not know what the value of planning is, what the vision for it is or what its purpose is, will the proposed measures on performance be meaningful? Will they take us anywhere? We are still measuring how long things take, but we are not really looking at outcomes. We have talked a lot about place making.

I know that Dr Inch wants to come in, but I wanted to explore that issue.

**The Convener:** Absolutely. A number of witnesses want to comment. We will hear from Dr Inch after we have heard from Petra Biberbach.

**Petra Biberbach:** Gosh. It is extremely important that we set out the purpose of planning. The Scottish alliance for people and places has made a submission to that effect. We want what the planning system is all about to be set out clearly so that people understand that right from the start.

I am sorry—could you remind me what the second part of your question was about?

**Monica Lennon:** It was about performance.

**Petra Biberbach:** The alliance for people and places feels that the measurement of performance should be extended to how community engagement takes place. It is vital that, as part of the measurement of performance, there is a move towards engagement with communities. That is extremely important if we want to enshrine the spirit of the bill.

**Monica Lennon:** I am a bit of a planning geek, as people might know. You said earlier that the majority of people still do not know that there is such a thing as a planning system. I looked back at the evidence that you gave on the bill that became the Planning etc (Scotland) Act 2006, when you said almost exactly the same thing.

**Petra Biberbach:** I know.

**Monica Lennon:** It is quite depressing that progress has not been made.

Is there a way in which we can better capture what the engagement strategy in a local area or a local authority is? Can we really quantify what people know or do not know about planning?

**Petra Biberbach:** We have a huge opportunity now, for the first time, to set it right. In 2005, when evidence was gathered and we were pushing for better engagement, we got the main issues report as part of early engagement. Of course, that is rooted in a language that the average person out there is just not conversant with, nor have we sold

what planning is all about—it is about the vision of a place and it is also about addressing societal needs, whether that involves providing affordable homes, dealing with an ageing population, future proofing our housing stock or addressing climate change. All those issues must be captured by the planning system and by the place agenda. That is very important.

If we want to start talking in the language of the ordinary person out there, we need to talk about place, which everybody is passionate about. Everybody is passionate about how the children get to school and how we can age in a healthy environment. We need to rethink the language of planning so that we can translate what it means for everybody. It is about how we ensure that we have a well-functioning place. Twelve years on, I am really frustrated that we have still not got it right, but we have an opportunity to do so now.

**Clare Symonds:** I want to reiterate what other people have said, and I thank Calum MacLeod for mentioning that the bill is process oriented. It is really important to have a purpose for planning, because then we can use our planning performance measures to measure outcomes and it will not just be a case of measuring process. We can also start measuring things more qualitatively instead of focusing on performance figures on speed and efficiency. We would need to have far more performance measures, which might not be as easy to measure because they might not be as quantifiable. However, in the past there has been talk with Heads of Planning Scotland about introducing measures to assess performance in relation to how well the community is engaged with. That needs to be thought about—possibly not in relation to the bill, but for later on.

**Ian Cooke:** You will see that our submission did not comment on that, but I totally agree on the need for the articulation of purpose. That is an absolute prerequisite if we want to engage communities more effectively and measure performance.

**Monica Lennon:** It should not be an either/or situation.

As far as the purpose of planning is concerned, I know that the Royal Town Planning Institute Scotland is advocating that there should be a chief planning officer. I wonder whether part of the issue is that there might be a lack of leadership in local authorities, because it is not just a case of looking at individual planning applications; it is about looking at planning strategically and the resource behind that for infrastructure.

Between 2009 and 2016, there was a 23 per cent reduction, on average, in the planning workforce in Scotland. On average, the planning service budget has been cut by about a third.

There is a lot of high-level talk about the importance of planning, but is that being backed up by resource and leadership at a corporate and political level, locally and nationally?

**Petra Biberbach:** I will refer to the alliance again—I am part of the alliance for people and places, which now has 18 member organisations, ranging from Play Scotland to the NHS. All we are saying is that we want to have a planning system that is really meaningful. In our submission, we said that we would like to see a chief planning officer in each local authority but, more than that, we would like to have a commissioner for planning and place so that we can align community planning and spatial planning.

If we look at the planning system as a form of preventative spend or as an investment tool, we realise that it is incredibly important. In relation to preventative spend, if we build the right houses in the right location, we will stave off loneliness. We are currently in discussion with NHS Scotland about that. If we look at planning from the point of view of an investment plan, that takes us back to the simplified planning zones that we mentioned earlier. It is a question of attracting investment of the right kind into Scotland. Planning is about much more than people realise when it comes to the entirety of what it can do, its aspiration and what it can do to help Scotland to meet its ambition as a nation.

**The Convener:** If anyone else wants to comment on that point, please do, after which we will move on to the next line of questioning, because of time constraints.

**Clare Symonds:** I have a short point about resources. Monica Lennon spoke about the impact of the reduction in the number of planning officers.

There is also the issue of how things are measured. For example, a local authority has to write a participation statement before it carries out its engagement activities. What the authority did is measured by the extent to which it complies with the participation statement rather than on the basis of whether what it did was useful and meaningful. A lot of the planning officers in a meeting that I went to said that they keep what they say they are going to do in the participation statement to a minimum, because they know that they would not achieve it if they said that they would do something more ambitious and creative. The performance measure is therefore stifling creativity.

11:00

**The Convener:** Are there any other comments on that before we move on?

**Petra Biberbach:** I do not recognise that sort of negative approach. I recognise that there are serious resource constraints, but local authorities up and down the country have been incredibly innovative, particularly in recent times, in engaging with a much wider community, and they want to be seen to be doing that.

**The Convener:** We will move on. At the event in Stirling that I referred to some two hours ago, I found myself saying that I never thought that I would stand on a platform and say that what we need in this country is more planners, but I did say that and I have now put it on the public record. I might retract that at some point.

**Graham Simpson:** One of the issues in the planning system is that communities—however we want to define them—feel that planning is done to them and not with them and by them. That has led to immense frustrations—that is a fact, not an opinion—with the planning system, particularly with the system of appeals. The bill currently makes no mention of that, but we have had a lot of comment on it. This is your opportunity to tell us what you think about the current appeals system. If the bill is passed, the system would remain as it is. Do you think that it is right that, as things stand, only one side can appeal? Should we have something new?

**The Convener:** Okay. That is opening up the discussion. I am sure that there must be opinions on the issue of equal rights of appeal. I suspect that Clare Symonds has an opinion on the issue, as I saw her hand go up at lightning speed when it was mentioned.

**Clare Symonds:** Well, let us face it, that is what we are here for.

As I mentioned at the start, the idea of equal rights of appeal has been presented as a blunt instrument that slows things down, polarises people and creates a divisive system, so it was somewhat hastily dismissed. However, we could use ERA to design a system that encourages people to front load and get engaged at the beginning of the system. As Andy Inch said earlier, we have been trying to do front loading for 50 years, so we have to think about doing it differently.

To make a plan-led system a reality, we could use the ERA mechanism in our highly discretionary planning system. Andy Inch has talked about the gap between the plans that we produce and the decision making at the end of the process. We want to bring together those two things because we think that that will create public confidence in the planning system. Why would people get engaged at the front of the system if the decision making at the end of the system could go against what they had worked hard to get at the

front of the system? We very much see equal rights of appeal as a means of improving the front loading of engagement and getting people involved, because it will incentivise better behaviour.

We also think that ERA might incentivise developers to work harder to get people involved in public engagement because there would be a stick at the end of the process. If there was such an appeals process at the end, developers might work harder to get people involved in the planning and the application right at the beginning. It might also encourage developers to work harder to ensure that they put in a good application at the beginning. The evidence from Ireland is that equal rights of appeal does improve the decision making.

We have all been discussing the purpose of planning and having a much more positive planning system that delivers good development. We think that a system whose main outcome is supposed to be delivering good decisions and development should not be afraid of having an appeals system. We want people to be able to ensure that the development that they are getting is the best that it possibly can be. Why should there be a negative reaction to such a mechanism?

**The Convener:** Does anyone else want to come in on that?

**Ian Cooke:** As Mr Simpson said, there is a perceived inequality in the planning process. There is a power dynamic that needs to be addressed by the bill.

We are all looking to ensure that there is greater community involvement in the planning process. To enable that to happen, the community needs to have confidence that getting involved in the process will make a difference, which will ultimately lead to better place making. I do not think that that confidence exists at the moment.

We have not got a strong view on the issue. We believe in the principle of equality, so we feel that there should be an equal right of appeal or that the current right of appeal for developers should be removed. We are looking for a level playing field that might address the power inequality that I mentioned.

**Petra Biberbach:** The review panel took a lot of time to listen to evidence from across different groups and organisations. We looked at a recent debate that had taken place in the Welsh Assembly and at examples of third-party rights of appeal across Europe and beyond. The reason why we decided not to suggest the adoption of a third-party right of appeal was simply because we wanted to create a new planning system that would truly empower individuals and groups and

would truly foster a dialogue between all the groups and all the interests.

Let us face it: planning is often seen as a David v Goliath battle. However, that is not the case. We have developers who are small-scale house builders; developers who build individual housing units; developers who put up shops; and so on. They are all developers, and we want to create a kind of dialogue that enables us to imagine what we want for places and for the nation. Very often, there are issues that we must tease out, and that can best be done in a dialogue. That is better than someone saying that they do not want to engage in a local place plan because they know that they can exercise their right of appeal later on.

I agree that the right of appeal seems to be overdue for reform. It was supposed to be in place for a 10-year period in order to help to smooth the work around the new Town and Country Planning Act 1947. I have discussed with some members of the committee the fact there might be an opportunity to look at the right of appeal again.

I have three points to make. I would say that a third-party right of appeal exacerbates conflict, it undermines the goal of very early engagement, which is what we want to see between all parties, and it would undermine a plan-led system. We should bear in mind that we are adding another layer—the local place plan—into the plan-led system.

There is quite a challenge. The planning system in Ireland is different in terms of the politics around it and how it is constructed. I would not want to say that we can do in Scotland what has been done in Ireland because, in Ireland, local elected members have no role in the planning system. There is no like-for-like comparison.

The issue is about bringing in the people from whom we do not hear enough. Chris Oswald has written in his submission to the committee that allocating sites for Gypsy Travellers is proving to be extremely challenging because local communities always object to them as bad development. Equally, community housing associations and housing associations in general find it difficult to get the appropriate land in the right location, again because some groups in the community view those proposals as bad development. We need to try to square the circle and have a planning system that can facilitate a better debate. For that reason, I would say that a third-party right of appeal is not helpful in relation to the current version of the bill.

**Dr MacLeod:** Community Land Scotland echoes that position on a third-party right of appeal. We are not in favour of its reintroduction for precisely the reasons that Petra Biberbach has articulated. It is important to front load the process

so that it works effectively to ensure that community voices are heard.

In the preface to his question, Mr Simpson mentioned that it was a given that communities' voices would not be heard in the process. That is true, and it echoes research on the place of people in landscapes that Community Land Scotland commissioned from Inherit, a Glasgow-based consultancy company, about how wild land designations interact or intersect with people's views about landscapes. One respondent told Inherit that people do things to them, rather than with them, and that out-of-kilter dynamic is critical in how we think about communities' voices. Wild land is an important example of an area in which we need to change and shape the planning process to get the balance right and incorporate communities' views. The bill should front load the process so that those tensions are ironed out and people's voices are heard more loudly than they have been.

**Dr Inch:** I come at this from a position of being in favour of equal rights of appeal. It is right to get people engaged early in the process, and it is important to get that up-front engagement right. At the moment, the discretionary nature of the planning system in Scotland means that the up-front engagement might be right but a subsequent decision might well depart from what has been said in the engagement process. Decisions about the use and development of land entail conflict, so although it is positive to get people together to try to shape agreement about how places should develop in the future, ultimately, hard decisions will be made, as a result of which some people will be winners and some will be losers. It is not realistic to expect conflict to be dissolved by front-loading mechanisms, which is why it is also necessary to think about the end of the process.

For really effective front-loading engagement, people have to be offered incentives to get involved. If a community devotes hundreds of hours of evenings and weekends to preparing a local place plan and getting it agreed, but the local planning authority makes decisions six months or a year or two down the line that completely overturn all that work, that does nothing for public trust and it hugely undermines all the effort and the front loading. In such circumstances, the inequality would be glaring. That is problematic for the legitimacy of the planning system and for the future of front loading and positive engagement in planning.

An equal right of appeal could reinforce a plan-led system; it would restrict a developer's right of appeal and introduce a limited right of appeal for communities. Appeal rights would apply only when decisions were made that were contrary to the development plan. Petra Biberbach's point that

people could sit back, wait and not get involved in the plan because they would have a second chance at the end of the process would not apply. If a community did not get what it wanted agreed in the local plan at the start, it would not have those appeal rights. That would provide a powerful incentive for developers and communities to get involved in the production of plans. It would not mean that people could just wait to have a fight at the end of the process. If we want to be serious about creating a plan-led system, an equal right of appeal is a powerful mechanism that is not being taken advantage of.

It is disappointing that such an approach has been hastily dismissed. The arguments have not been looked at or debated in full, but the number of submissions that mention the issue shows that people care about it and are concerned about it. That is partly because the inequality is glaring and obvious. An equal right of appeal would not be a panacea—it would not resolve the problems of planning overnight, but it is potentially a very positive mechanism. It does not have to be a blunt instrument, as Clare Symonds said.

**The Convener:** Are there any other comments from the witnesses?

11:15

**Petra Biberbach:** I do not know where the phrase "hastily dismissed" came from. Third-party right of appeal was not hastily dismissed; we looked at it in a lot of detail, gathering evidence over months and months.

The spirit of the bill is to do with the desire for collaboration and engagement at the earliest opportunity, and we safeguard such an approach by having a duty to root the local place plan in the development plan. The important point is to find the right mechanism to protect the approach.

It is absolutely true that planning must always deal with competing demands, but we work with many different communities and we think that as long as things are explained and communities are enabled to understand, and as long as the decision-making process is transparent, even if people do not get what they want, giving people information and respect is much more powerful.

Let me give a recent example. We have been working with a community in Dumfries, which wanted to put forward certain developments, which did not happen. It helped to explain why that was not possible this time round. I do not agree that a third-party right of appeal will help the system.

**Graham Simpson:** I have questions for Planning Democracy and PAS, which have different perspectives on the issue.



One of the arguments against introducing any right of appeal for communities or people is that it could slow down development, which could frighten developers away. I have already heard developers say that they do not want to do business in Scotland because the planning landscape is worse here than it is elsewhere, and a right of appeal for communities would make it even worse. How does Planning Democracy respond to that? It is inevitable that the approach would slow down the system.

I have a question for PAS, too.

**The Convener:** I will let you back in to ask your second question after Dr Inch or Clare Symonds has responded.

**Graham Simpson:** Okay.

**Dr Inch:** The view that you have described is based on a blunt-instrument interpretation of how an equal right of appeal would work.

If we want a plan-led system, development that is designated in a plan should have a smooth process through the system. If a proposed development meets the agreed terms of a development plan, it will not be subject to appeal and the development will not be slowed down; it will be enabled and facilitated. That is proper and correct.

If a proposed development is not in accordance with the development plan, it is right to say that we might want to have the capacity to take a second look at it. The decision is going to be controversial, because the development is outwith the parameters of what has been agreed and expected, and in that situation it is right and proper to give the matter a bit of extra scrutiny.

Yes, such an approach might lead to a slower process for such developments. However, it creates an incentive to ensure that proposed developments are in accordance with and strengthen the plan. The developments that are slowed down are the ones that are outwith the plan and at which it seems fair enough to have a second look. We are not saying that such a development should be dismissed out of hand and refused; it might well be that the situation has changed and the development should be approved. However, it is not unreasonable to say that there are good grounds for taking a second look.

**Clare Symonds:** I suggest that marginal or potentially controversial decisions would also be subject to a right of challenge or appeal. That might produce some delay in the process, but it is important for democracy and for people's confidence in the system that if, for example, a decision is to be made by the council about

development on its own land, the proposal will be looked at.

Such an approach can only provide confidence. It might delay things for a few weeks, but we ask members to consider not just the process but the wider benefits.

**Graham Simpson:** PAS said in its submission:

"provisions in the Bill will promote stronger public involvement".

I do not see that in the bill at all. I think that we could end up with less public involvement. PAS might want more public involvement, but I do not think that the bill provides for that.

You said that the system of appeal is ripe for reform, but you did not suggest reforms. Perhaps you will do that now.

**Petra Biberbach:** First, the review panel was more ambitious. However, I think that giving the local place plan proper teeth can address the democratic deficit and produce a more engaged public. Currently, the public are not engaged. The same groups, who know how the planning system works, get engaged again and again, but the vast majority of people out there are not involved, and we want them to be involved.

On rights of appeal, I have been looking at what happens in most of continental Europe, where there is no right of appeal on both sides. The bill gives us an opportunity to consider what we can do in simplified development zones, where planning is front loaded and the developer and everyone else sit round the table. There might be opportunities there. Further work is required on that.

**Graham Simpson:** Are you suggesting that we remove appeal rights in simplified development zones?

**Petra Biberbach:** I am just saying that there might be opportunities to look at something fresh.

**The Convener:** There are a lot of supplementary questions from members.

**Kenneth Gibson:** Clare Symonds talked about the approach in Ireland, where infrastructure projects and specific developments are excluded from third-party right of appeal. There is clearly a need to protect some developments from delays that would impact on Ireland's competitiveness. If a third-party right of appeal is introduced in Scotland, what exemptions from the process should there be, if any?

**The Convener:** Let us hear from advocates of a third-party right of appeal.

**Dr Inch:** We said in our submission that there should be a limited right of appeal, which would apply—both for developers and for communities—

when decisions were to be made that were a departure from the plan, when a local authority had an interest in the land, and when a decision was being made against an officer's recommendation, because that would indicate that there was some controversy or something that it might be worth having a second look at.

There are planning systems, for example in Australian states, in which third-party rights are suspended on certain priority projects. National developments might be treated in that way.

There is a much broader question about how we enable engagement in big infrastructure projects. That is a big issue, which is separate from the right of appeal issue to some extent. In Scotland we already have a complex consents regime: energy consents and other things go through different regimes and are not fed through the planning acts. There is a whole set of questions about how the different regimes would be aligned and how different types of infrastructure development, including national developments in the NPF, could be subject to proper public scrutiny, engagement and input. That opens up a much broader range of issues.

For the past 20 to 30 years, the idea that planning is a source of delay has been repeated around the world and has been a powerful argument for reform of planning systems. However, if we consider the life cycle of big infrastructure projects, the evidence is that the length of time that is spent on the planning process and making decisions is not great.

I am thinking of a paper that was published last year by colleagues at Oxford Brookes University and Cardiff University, who looked at big infrastructure planning in England and showed that the planning process has not really changed over time and that delays are as likely to be caused by developer commitment wavering or political commitment wavering as they are to be caused by planning.

When the environmental, economic and social impact of big infrastructure developments are considered, it is right that we have a democratic process of scrutiny and you need to think about how to include and enable that process. Big infrastructure projects are a separate issue that is worth debating. The principle that scrutiny is important also applies, but it is even more important on such developments.

**Kenneth Gibson:** We heard from Mr Cooke that

"the community needs to have confidence"

in the process, and throughout this morning's session we have heard from all the witnesses about the need for community engagement.

Mr Inch talked about officers' views being overturned, but those will be overturned by elected representatives who have a direct link to communities.

The Planning Democracy submission states:

"right of appeals for communities would create a powerful incentive for individuals, community groups and developers to get involved in the production of plans".

Who are those communities? How would a community be involved?

I was first elected in 1992. My experience has been that community engagement often extends to seven or eight people turning up at a meeting and claiming to represent the community, but those people do not liaise with other people in the community—they do not even do newsletters and they might not have a website or even a collective email address. However, elected representatives stand or fall by their decisions. How do we ensure that this group—this community—that everyone seems to talk about is representative of the people in an area?

If we are designing local plans, how do we exclude the issue of nimbysism? We have heard it said that if a plan is put together, and as long as that plan is adhered to, there will not be an issue with third-party right of appeal. However, I have communities in my constituency—I know that everyone else does, too—who point-blank do not want any development. They do not want housing, they do not want wind turbines and they do not want economic development. Often, the people in those communities are retired and they have reasonable pensions, so the issues of economic growth and sustainability are matters for someone else. How do we counter those issues and ensure that we move forward?

On Monday, Alexander Stewart and I had two sessions with 19 organisations that represented a host of groups that are involved in development. None of them supported third-party right of appeal because they all considered that it would put Scotland at a competitive economic disadvantage.

**The Convener:** You squeezed a lot in there, Mr Gibson.

**Kenneth Gibson:** Indeed, because I knew that I probably would not get another shot at doing so.

**The Convener:** That is probably true, unfortunately, because of the time limitations. Who wants to respond?

**Petra Biberbach:** The generational imbalance is an important debate. Talking about the current system is a challenge, because we are also looking to have a new system. Fundamentally, we need to bring in many more young people. Scotland has signed up to the United Nations

Convention on the Rights of the Child, which is about ensuring that children are involved in decisions that affect them. Place affects young people, whatever their age. Indeed, it affects everyone, but young people are disproportionately not involved. If we are talking about who needs the housing of the future and what infrastructure we need, we must involve all people in the debate. It is not about being punitive; it is about being proactive, engaging and listening to everybody's views.

We recently completed another charrette not far away from here. We went out and brought in young people, those who do not usually have the time to get involved and people who are in care homes and who wanted to have a discussion with young people. Such debate is very important. If we are talking about having a new planning system that is inclusive and collaborative, and which facilitates development of whatever size and kind, we need to involve everyone. That is not a naive view; I see that happening on the continent, where it works well and speeds up the process.

**The Convener:** I promise to bring in Planning Democracy in a second—I am sure that you will have a substantive response—but first I bring in Dr MacLeod.

**Dr MacLeod:** I will make a quick reflection on Mr Gibson's question about who the community is; that is probably a three-day conference in itself. [*Laughter.*] I will fly the flag for community landowners. They represent their communities, because they are elected to bodies that have constitutions and are accountable through the members of that community; they are voted on to a trust or a board and they have to represent their community in that context.

That mechanism of accountability, transparency and democracy does not exist in some other types of land ownership in Scotland—that is certainly the case for private land ownership and in other instances, too. That is a critical point for community land ownership per se.

11:30

As for Mr Gibson's point about challenges to development, which I think that Mr Simpson mentioned when he referred to drags on development, the critical thing as far as Community Land Scotland is concerned is that when we talk about development, we mean sustainable development. That is about getting the balance right between the economic, social and environmental aspects. Forgive me for going back to this, but I think that it is important: one of the best and most effective examples showing where these tensions exist and why communities find it challenging to strike the right balance is the

concept of wild land and wild land mapping. Often a designation or label is given to a part of the landscape, but it is just an artificial construct; human engagement gets moved out of the process, with significant implications for how people and communities engage with the landscape in that context.

Development opportunities have to be sustainable and reflect economic growth, environmental sustainability and social cohesion, but the balance needs to be right. Community Land Scotland would argue that realignment should be part of the process and that—just to continue with the wild land example—we should think about how that sort of thing can be rebalanced. In our submission, we call for the bill to contain a provision in which ministers have regard to a map of human communities that no longer exist, because—as we, at least, would argue—that would sit very nicely or appropriately as part of these debates, conflicts and challenges around sustainable development. We would certainly advocate that being in the bill as well as being part of policy.

**The Convener:** You were right to come back to the issue of wild land, because you might not get another opportunity to do so in what is a quickly shrinking evidence session.

**Dr Inch:** From a Planning Democracy perspective, communities are often portrayed as nimby's. It is a very useful label, as it dismisses them as having a fixed and unchangeable set of interests and as being opposed to everything. That reflects a planning system that is adversarial, and it is adversarial because of the discretion that exists at the end of the process, which, by and large, means that speculative development applications are put forward and people react to them.

In our experience, however, people are far from having hugely fixed nimby interests; they care about and want a stake in the future of the places where they live. In that regard, the nimby label is not useful. It is a way of dismissing people and the responsibility of the planning process to allow those people to explore how various development needs can be met in future. That is the positive and proactive concept of planning that has been talked about a lot today, and people need to think seriously about how the process can achieve those things. There is a real problem in that respect, and it reflects a planning system with very entrenched positions.

That entrenched side of planning comes up a lot in Planning Democracy's work with regard to repeat applications. A developer's application for a site might get refused, but a couple of years later, they will come back with the same application. The community goes through the whole process of

mobilising around something that is often outwith an agreed development plan, the application is refused and then it comes back again and again. If they are well resourced, developers can win that sort of war of attrition, and it is therefore no wonder that people step back and become very opposed to developments that they feel are being done to them instead of with them. That example shows why such positions get taken in the planning system, and we need to do something about that.

I would also highlight the issue of competitive disadvantage, which has been bandied about a lot with regard to appeal rights. I would say that it is a blunt instrument version of the ERA argument. If you really think that Scotland's competitiveness will be disadvantaged because of an ability to take a second look at applications that sit outwith the terms of an agreed development plan, that competitiveness has a very thin base. I do not really believe that that argument stacks up strongly when it is applied in that restrictive way.

**Clare Symonds:** Mr Gibson mentioned councillors, too. I have discussed the matter with them, and the Edinburgh councillors agreed. They asked for a right of appeal because they found that the imbalance of one party having the right of appeal and not the other meant that their decision making was being biased towards the person who had the right of appeal—they did not want to make those sorts of decisions, in case the developer made an appeal. The councillors wanted the right of appeal so that they could make stronger decisions and be empowered to make a decision that went contrary to what an applicant wanted without the threat of an appeal and its cost.

**The Convener:** There are a couple more questions on this issue.

**Andy Wightman:** The Edinburgh example that Clare Symonds just mentioned is, of course, the council seeking to restrict the applicant's right of appeal, because it wants to have the final say in what applications take place, in a sense. West Lothian Council's written submission said that it had earlier

"called for the right of appeal to be removed where a development proposal was significantly contrary to an up to date development plan"

and it was restating that position.

We know of a number of instances—and I think that members have all had correspondence about those in recent weeks—in which there is land that is zoned for use A in a local development plan, and an application comes forward for it to be used for use B. That is rejected because it is not in accordance with the plan, the applicant appeals and goes to the planning and environmental appeals division of the Scottish Government, the

DPEA upholds the appeal and then ministers come in and overturn it.

Petra Biberbach talked about undermining plan-led systems. Is the ambition of having a plan-led system and up-front engagement being undermined by the ability of applicants—not third parties, but applicants—to appeal decisions that have been well made and well formed and which form the basis of a local development plan? Could some of the tension and cynicism in the system be removed if we substantially removed the applicant's right of appeal, which, as Petra said initially, was only meant to last 10 years?

**The Convener:** I would love all of the panel to answer briefly.

**Petra Biberbach:** We are on a journey and it has often been said that the current system does not work as well as it should and could do. We are in a new era: a new bill is being considered with very different mechanisms and we want to strengthen them. I think that we can. This is an opportunity to make the local place plan even stronger and to look at the current appeal system in its entirety. That is important. I am sure that the alliance will be making further comments on that.

**The Convener:** Are there any other comments? Alternatively, witnesses can ask a question, rather than make a comment on someone else's question.

**Petra Biberbach:** Going back to what was said by West Lothian and Edinburgh councils, I think that we are seeing a journey in which local authorities are exerting a little bit more power.

**The Convener:** Okay. If a question has chimed with any of you, you might want to put that on the record before the deputy convener explores some other matters.

**Ian Cooke:** Going back to the point that I made earlier about trying to address perceived inequality in the system, for us it is about the principle of equality and making that obvious and transparent. How that is done is probably less important than actually addressing inequality.

**The Convener:** Dr Inch and Clare Symonds, I do not want to put words in your mouth, but I think that I am not making a great leap of faith to say that you probably agree with the comments that Andy Wightman made. Do you want to put anything else on the record before move on?

**Dr Inch:** We agree. Our suggestion would be both to restrict the existing right of appeal and to expand the right of appeal for the community. Planning Democracy feels that there is a purpose to an appeal system in terms of testing, scrutinising and, potentially, improving decisions. It would not be a good thing to lose that entirely.

**Monica Lennon:** We have covered an awful lot there, and we started to touch on a rights-based approach. Petra Biberbach was talking about young people, and we might take evidence from Cliff Hague at a future session that will go into that issue, but we are still, even today, talking about the community as a third party. I wonder whether that is a bit of a barrier.

I want to return to the review. Petra, you talked about the alliance and PAS. You were on the review panel and you are on the Loch Lomond and the Trossachs National Park Authority—you are wearing lots of hats. When you were on the review panel and it was doing a scan of European practice, which hat were you wearing? Was it a PAS one?

**Petra Biberbach:** Yes.

**Monica Lennon:** With regard to the 800 live cases that you have—which I guess is an annual average, if you have 1,000 inquiries—what are the views of the people who pick up the phone and call PAS for advice and support? What consultation have you carried out with them? Who are your stakeholders?

**Petra Biberbach:** They are not necessarily stakeholders but people who have come to know about the planning system, often very late in the day. They may have come across a planning application from their neighbour or a development that they do not want to see. They often have a very reactive approach, such as, “I don’t want to have this happen. Can you talk me through it?” Sometimes the adviser will assist them in understanding how the system works or the fact that it is perhaps too late, because the development was in the local development plan. We work in lots of different arenas.

I should say that many cases are simply about people understanding, for the first time, that there is a planning system. I find it very disheartening that there are so few people who know about it and that we are still having to field such calls because people are not involved early enough. Redressing the balance to bring people into the debate is crucial, so that we have a true place plan that works for everybody.

**Monica Lennon:** Earlier, you said that the review panel did not make a recommendation on putting the purpose of planning into statute. Perhaps that was an omission, because PAS’s submission says that there should be a statutory definition of planning. You now say that we need to have a debate and look at appeals but, rather than doing that, do we not need to get this right in the bill?

You had set down three tests about equalising appeal rights: doing that could exacerbate conflict, undermine early engagement and undermine the

plan-led system. Other witnesses have talked about the journey of a planning process, whether it is in a development plan or in an actual application. For those of us who have spoken about getting to a point at which the integrity of the development plan is taken seriously, what does allowing applicants to come in at the end of that process and, if they do not get a decision that they like, lodge an appeal do to strengthen the plan-led system? Surely if we were not in favour of introducing equal rights of appeal for people who live in an area and have to live for many years with the consequences of a decision, we would look at curtailing the appeal rights of applicants.

**Petra Biberbach:** I firmly believe that we should open up the process so that everyone comes into the discussion about where we put our 50,000 affordable homes. Bringing in elected members, the various community groups and the developers to have a discussion that is adult and democratic is what we need right from the start.

On the panels’ recommendations, the then cabinet secretary gave the panel the specific remit of reviewing the planning system and looking at innovation in housing. On community engagement, so many different communities out there have very different views, so bringing them all together is important. That is where we are right now, and that is why members have the opportunity to create a planning system that is fit for the next 20 or 30 years or however long it takes.

**Monica Lennon:** I turn to Planning Democracy on that point. What you have proposed in your submission is not just an open-ended right of appeal but an attempt to be proportionate in setting out criteria. I think that Petra Biberbach has said that when the former cabinet secretary commissioned the review, the remit was to look not at the whole scope of planning but very much at delivery and housing. Was that a missed opportunity or do we still have time to get it right?

11:45

**Dr Inch:** I would like to think that there is still time to get it right. We have a bill that needs to be worked up, and there are a lot of concerns about its content.

We have said that we do not think that the debate has been well handled, particularly around the equal right of appeal. The Government was quick to launch its 10 commitments in response to the panel’s report, one of which was a negative commitment—a commitment not to take certain action—and that was effectively an attempt to close down debate. We feel that that has been driven largely by the concerns of the development industry and others that are based on a blunt-

instrument interpretation of what an equal right of appeal is. Petra Biberbach's aspirations to get people involved early and get agreement sound fantastic, and all of that front-loading stuff really matters, but where are the mechanisms that will make that happen? People have been saying that since the 1969 Skeffington report. That is 50 years of good intentions that have not yet materialised.

What is there in the bill that can substantially change and challenge that, and that recognises the nature of the planning system that we have—the nature of the discretion, the gap between the plan and the decision, and what that means for the ways in which decision making operates? I do not see that sort of analysis anywhere in the discussion, and that is a serious flaw in the understanding that underpins the bill.

**Monica Lennon:** My understanding is that Planning Democracy is completely volunteer led and that you do not get any public funding. It struck me from looking at some of the submissions that community engagement is not always a bottom-up, grass-roots thing. There are a lot of people who work in public relations or in other organisations who come in and do community engagement. I picked out one submission from the Birnam to Ballinluig A9 community group. On PAS, which was brought in to act for Transport Scotland, it states:

"PAS have outsourced the design, printing, distribution of communications for the community and even social media for the Co-Creative process from the local area to an Edinburgh agency."

There seem to be an awful lot of people who may have a stake in the status quo, which involves doing community engagement to communities. That may pick up on Graham Simpson's point about people feeling that planning is done to them. Is there a view that those processes, particularly when PAS holds an event on a Saturday morning and says, "Here's a chance to come in and inform the process," are a bit of a tick-box exercise?

**The Convener:** Monica Lennon's question is about a specific consultation response and the role of PAS in particular, so it is appropriate to give Petra Biberbach the opportunity to respond to that. There are a couple of questions that we need to ask for completeness on the bill, and members are probably itching to close the session for a comfort break, so once Petra has responded I want a couple of brief mop-up questions and then we will have to close.

**Petra Biberbach:** I would like to respond in writing to the committee on those particular allegations, because they are serious and misleading and have no facts. If the convener allows me to, I will write to the committee and share with members the letter that we have written to the community.

**Monica Lennon:** I was not making any allegations. I was reading out from the written submission.

**Petra Biberbach:** I am not saying that you are making allegations, but the submission is factually incorrect.

**The Convener:** Please write to us on that point. It will be entered on our public record that that has been said in an individual submission. That does not make it true; it just means that someone has said it, and it would be helpful if you could correspond with us on that.

**Petra Biberbach:** The other point that you mentioned was about how we can strengthen the system. We have an opportunity to ensure that the local place plan is a democratic expression that has real teeth and is given the right kind of endorsement in the local development plan.

**The Convener:** The PAS submission states that there could be a benefit in creating

"a statutory duty to involve young people in the planning system",

and that that could achieve a lot. How could local authorities prove that they have met requirements to take forward that duty? Is that something that PAS is particularly passionate about? You have put it in your submission, and you have an opportunity to make some brief remarks about that.

I will come to Dr MacLeod in a second to address one of his suggestions.

**Petra Biberbach:** There is a deficit between the people who are currently involved in our planning system and the many young people who are not engaged. We see an opportunity to change that, especially through ageing community councils, which need that sort of renewal. We are currently working in a school in the Borders over a four-year period to bring young people into the planning system, to help them understand the place agenda, and to work with community councils and development trusts.

Bridging the gap, as it is called, is a new way to do things. It is vital that the voices of young people are heard. They will live longer with the decisions that adults make, and we have neglected to look at the longer-term plan that young people will need. The duty is there because Scotland has signed up to the United Nations Convention on the Rights of the Child. If you can find some mechanism through which to engage young people, it will change the debate, because they have great capacity to think out of the box.

**The Convener:** Thank you for putting that on the record. The debate has squeezed out the comments that I think Dr MacLeod hoped to make

about Community Land Scotland's proposals to encourage resettlement of parts of rural Scotland. You have impressively managed to squeeze some of those views into the two plus hours, but before we suspend the session, this is an opportunity to put on the record why that would be a desirable objective for the planning system.

**Dr MacLeod:** Thank you for the opportunity, convener. It is worth reiterating that Community Land Scotland thinks that there is a pressing and compelling case for considering resettlement and repopulation of parts of rural Scotland alongside the issues that are already in the bill. That case is driven by the social cohesion of rural Scotland and sustainable development in that context. We need to get a balance between addressing challenges in existing communities and considering how to restructure where communities might aspire to exist and how that might benefit their quality of life, the ways in which they relate to the environment and their economic development opportunities. We are calling for a duty for Scottish ministers to take account of that desirable, relatively modest but important development in how we think about the planning process and how rural Scotland should ultimately thrive. We advocate having such a duty and we would like that to be considered in the committee's report, if you see fit to do that. We would also like to see that duty in the bill and in the wider policy framework.

We have called for a particular stand alongside powers in relation to how to do that—if I can put it in that terribly ineloquent way. The Scottish Government and other authorities could be required to have regard for resettlement and repopulation, which might entail the need for powers such as for compulsory purchase.

From our members' perspective, it is important for Scottish ministers to produce a map of communities that no longer exist, which is important with regard to the relationship between people and landscape and how wild land and ideas of sustainability sit within it. The map would be an important complementary mechanism to help to shape decisions on planning and sustainability in a rural context.

**The Convener:** I ask Clare Symonds to hold on to that thought. The session is about to get even longer—it has now lasted for two hours and 45 minutes—but we are trying to maximise the opportunity to put things on the record.

Mr Wightman has a question that will give the last opportunity for an answer. Brevity will be anticipated and expected in the question and the answers—important as they are.

**Andy Wightman:** Thank you, convener. I will ask about the national planning framework and the strategic development plans. What are your views

on the big proposals to change the status of the national planning framework so that it becomes a statutory part of the development plan? It was introduced as a light-touch spatial expression of ministers' policies and does not have much scrutiny in this place.

Secondly, there is a proposal to abolish the strategic development plans. However, in 2014, the Scottish Government's review said that the system was "not 'broken'" but that its potential was not yet fully optimised, and we have had evidence from Clydeplan, for example, which has been working on this issue for 40 or 50 years, which very much supports the idea of strategic development plans.

Does anyone have any thoughts on those issues? If you do not have any thoughts, do not feel obliged to speak—as the convener says, we are tight for time.

**The Convener:** Also, if you have many thoughts, you can give us a flavour of them now and then write to us later with more details.

**Clare Symonds:** We have already said that we think that the national planning framework should be a national-level document and should not be incorporated into the local development plan. That is all that we would want to say about that.

We feel that the strategic plans have not had time to bed in and that it might be a bit premature to lose them at this stage.

On the issue of the inequality of arms, I would just say that developers can put in repeat applications because they have the luxuries of time, management and resources and have an understanding of the planning system that communities do not have, and they have a right of appeal. When I started campaigning for an equal right of appeal, I was quite surprised by the kind of reaction that I was getting against it. Over time, I have come to realise that it is because there is another group of people aside from nimbys: the diimvis. That stands for "development is in my vested interest". We have to be aware of that group.

**The Convener:** I am sure that, when we talk to developers, they will defend themselves and tell us what they believe the impact of the equal right of appeal would be. Thank you for that comment—you were given the opportunity to put your view on the record and you took it.

**Dr MacLeod:** From the perspective of Community Land Scotland, the key issue is to ensure that the national planning framework and the levels of policy and governance around it fit together and work in the interests of communities and the sustainable development of Scotland. Without rehashing what we have said, I will say



that we are calling for the broadening out of the vision thing in relation to planning, and how all the levels fit together. We hope that the proposals in our submission, which you have read, will propel that forward.

**Ian Cooke:** I have nothing further to add.

**The Convener:** You are my absolute favourite witness right now.

**Petra Biberbach:** We recommended the removal of strategic development plans in order to allow greater focus on local plan making and to allow authorities—especially in the context of city regions—to work together much more nimbly. We felt that, in the past, the lack of the ability to work together cohesively resulted in a lot of delays.

In line with the new bill, there should be less focus on yet another big document and more focus on spatial strategies and delivery. Delivery is one of the things that got lost in the morass of plan making in Scotland. There have been so many plans.

The national planning framework is absolutely vital. We have argued that it should be discussed at a parliamentary level, because it is an expression of interest in what society in Scotland needs and wants. A greater alignment with housing is important, and infrastructure should be discussed at that level, hopefully on a regular basis.

Cascading that down, the local development plan should be a local expression of those needs that brings in the local place plan. It is important to have a system in which everything fits neatly, up and down, and which enables everyone to know what is expected of the different parts.

**The Convener:** I think that, in this morning's session—it has been nearly three hours, now—everyone has had a fair crack at putting their views on record.

I thank the witnesses who will join us for our next panel, who have been waiting incredibly patiently. We will suspend in a moment, and resume at 12:05. The next evidence session will run until 12:45.

I thank everyone for giving evidence this morning.

11:58

*Meeting suspended.*

12:05

*On resuming—*

**The Convener:** We move to our second panel of the session. First of all, I make apologies on

behalf of Fiona Ellis, who is a business support manager at DF Concerts & Events; Mike Grieve, who is the owner of the Sub Club and board member of the Night Time Industries Association; and Mick Cooke, who is a composer. They have fallen foul of the red weather warning that is in place across east and central Scotland and towards Glasgow. However, we are delighted to have with us today Beverley Whitrick, who is the strategic director of the Music Venue Trust; and Tom Kiehl, who is the director of government and public affairs at UK Music. I understand that he came from further afield to attend—the planes were flying if other things were not running.

I thank the panellists for their patience. Our initial session was substantial and lengthy, but it had to be given the range of issues that had to discuss. This evidence-taking session will be much more focused. However, it is only reasonable to allow both of you to make opening remarks.

**Tom Kiehl (UK Music):** Thank you very much for allowing us the privilege of talking to you today about an important issue for the music industry. UK Music is the umbrella body for the commercial music industry across the United Kingdom. We are globally unique, because we bring together the live music and recorded industries, the creators, the music publishers and the collecting societies. I do not think that there are many other organisations in the world that are able to bring together such disparate bodies under one footing.

We carry out a lot of work on data and research into the music industry. We value the music industry's contribution to the economy at about £4.1 billion. It generates £2.5 billion-worth of exports and employs 140,000 people. Those are UK-wide figures, but we also report on Scotland-specific figures.

Scotland makes an immense contribution to the music industry. Last year, we reported that music tourists coming to Scotland spent about £334 million, comprising £212 million on concerts and £123 million on festivals. The number of people who came to Scotland to attend live music concerts and events was 1.2 million, and music tourism sustains 4,000 jobs.

As an industry body, we are always looking at areas where the industry can be strengthened. Over the past 10 years, we have focused on concerns about venue closures, particularly at the small end and the grass-roots level. In working with partners such as the Music Venue Trust, we estimate that about 35 per cent of venues have closed in the UK during that 10-year period. In effect, we are a third down, which is a matter of great concern.



There are many reasons why a venue might close, including licensing, business rates and changes to business. However, over the years, we have noticed a trend of planning issues becoming a concern. Whether through the rise of gentrification in certain areas or new developments taking place, planning disputes and the associated costs can threaten a venue's existence.

In recent years, we have campaigned for the agent of change principle, which derives from Australian law. In Australia, they originally had success in achieving that principle. In effect, the principle puts an onus on those coming into an area, including new businesses, to take responsibility for their impact. It also puts an onus on what is sometimes termed, I think, the right to first occupancy.

We hope to get to a strong and robust position. We have made substantial progress in England and Wales and we were delighted by the Scottish Government's announcement about 10 days ago of its commitment to change the Scottish planning framework and policy documents in this regard. That said, there are areas in which it could perhaps go further with the agent of change principle and planning law could be strengthened by going into even greater detail. Perhaps we can come on to that. I hope that my initial remarks are helpful to the committee.

**Beverley Whitrick (Music Venue Trust):** In contrast to UK Music, Music Venue Trust is a small and extremely focused organisation. We are a charity whose specific aim is to work with what we term grass-roots music venues. By that, we mean venues whose core purpose is to put on live music with the intention of developing new artists and connecting them with audiences. We are not talking about places that have music as an add-on to other business models such as selling alcohol or food; we are talking about those venues whose reason for being is that they believe in music, and want to share music and develop new artists.

We see grass-roots music venues as the research and development department of the UK music industry and therefore believe that their sustained operation is incredibly important to the whole music industry and its social, cultural and economic value. We are delighted that that has already been registered in the letter from the planning minister and that the Scottish Government recognises it.

A lot of the work that we do is in partnership with organisations such as UK Music and the Musicians Union. One of the main things that I would like to do is to draw attention to the UK live music census, which has just been published. It is a UK-wide report led by the University of Edinburgh that has collected statistical evidence to

support the anecdotal evidence that the Music Venue Trust has worked with in the past. There are two key statistics, which are that one third of venue respondents to the online survey identified that planning and property development had a negative impact on them in the past 12 months, and that nearly one third of them—29 per cent—said that noise-related complaints had a negative impact in the past 12 months. Together with the extent of the closures that Tom Kiehl mentioned, those statistics emphasise how serious the threats are to the sector and the need for action now to sustain its important role.

**Graham Simpson:** I must be honest and say that, before we had a deluge of correspondence on the issue, I was not really aware that it was an issue, which it clearly is. Will you briefly explain what the problem is for you? Then we can go on to discuss the bill, which is what we are here to do.

**Beverley Whitrick:** One of the biggest challenges for grass-roots music venues is that, historically, they operated in isolation. We were formed in 2014 and started to build a collective voice for the venues but, prior to that, venues operated in their local community with little reference to one another, to larger venues or to other parts of the music industry.

The other factor that has helped to create the stack of challenges is that, in many instances, grass-roots music venues are not formally recognised as cultural venues. Many local authorities perceive them to be businesses and a lot focus on the fact that they are licensed premises rather than on their cultural contribution. Therefore, they are often approached and worked with as if they were bars or nightclubs, rather than cultural venues. That has meant that they face harsher licensing regimes, higher business rates and perhaps more scrutiny from the local police than other cultural venues. One of the core pieces of the Music Venue Trust's mission is to gain recognition for grass-roots music venues so that they have cultural parity with theatres, arts centres, galleries and other spaces that are recognised as contributing to the cultural life of the UK.

12:15

**Tom Kiehl:** As an example of the specific problem that the agent of change approach is trying to address, a venue might have been co-existing with other businesses in the area for 15 years, but a new-build development, say, or a change of use might create problems for it. We all want people to have places to live in but, as soon as residential accommodation is developed, venues become vulnerable to noise complaints and licences can come under threat. In many ways, that is the crux of the issue and the reason

why we are calling for an agent of change approach; it puts a responsibility on the developers or whoever is making the change to help with soundproofing, the installation of noise meters and so on. This has become more of a problem and a trend because there have been so many such developments in recent years.

**Graham Simpson:** That was certainly my understanding. Beverley Whitrick raised an interesting point about the issue being more licensing based. We are looking at planning today, and you will have seen the letter from the planning minister, saying that he will tackle the issue through the national planning framework. I presume that you are happy with that approach, but should there be any such provision in the bill over and above what might go into the framework?

**Tom Kiehl:** The letter and the recent commitments from the Scottish Government are very welcome, but you have to read them alongside the intention behind the bill to bring Scottish planning policy into the national planning framework. That will strengthen the framework considerably, and if a new version of the document were to make a specific commitment to the agent of change principle, it would be very important.

You are right to ask about other areas where planning policy could go and how that might improve the situation for music venues. For example, developers could be required to complete a noise impact assessment, which is something that we have looked at and which would sit quite nicely alongside the agent of change commitments that have already been introduced. Another suggestion has been developed in Wales as part of the Womanby Street development in Cardiff. When a commitment to the agent of change principle was made there, there was also a commitment to looking at enterprise zones or local development plans with the aim of protecting areas of cultural significance, particularly those of long standing, and creating a framework in which they could be protected. Those are two areas where the bill can be strengthened.

There could also be a duty on planning authorities to prevent unreasonable consequences. That would be a form of the agent of change principle; it would take things slightly further, but it might give the principle even more of a statutory basis than would be created as a result of the recent commitments.

**Beverley Whitrick:** This, indeed, takes us into the areas of culture and licensing, but I would note that the Theatres Trust has a statutory right to comment on any planning application in any part of the UK that impacts on an existing theatre building. At the moment, however, we have no

right to comment on any planning application that might impact on a grass-roots music venue. If the Scottish Government were minded to consider that as a step forward, it would be a trailblazing measure. It does not happen anywhere else in the UK, but it is a very definite planning measure that would have a real and positive effect on the protection of grass-roots music venues.

**Graham Simpson:** How do you define the term “grass-roots music venue”?

**Beverley Whitrick:** We have quite a robust and internationally accepted definition that refers not only to the intent of the business but to its physical infrastructure. As I have said, it is a place that exists to promote artists and which has the correct infrastructure in that respect, instead of being, say, a pub that puts on music to attract people. There is a checklist and a definition that can be applied to assess whether a place that is being affected is a grass-roots music venue. For example, King Tut’s Wah Wah Hut in Glasgow has been subject to three planning applications in the past five months that have an impact on it. King Tut’s is a world-renowned music venue that develops up-and-coming artists and enables audience to connect with them.

**Graham Simpson:** I know King Tut’s—I have been there. It was a long time ago, of course.

**The Convener:** I think that we would want evidence of that.

**Graham Simpson:** It was to go to a gig, convener—

**Kenneth Gibson:** He went to see George Formby. [*Laughter.*]

**Graham Simpson:** Clearly, King Tut’s is a music venue first, which also has a licence. I understand that.

**The Convener:** I will bring in other members in a second. I know that you cannot speak about live planning applications but can you just give us an idea of their impact? You say that King Tut’s has been subject to three planning applications. What does that mean for that venue? I am unclear about that.

**Beverley Whitrick:** Within our network, we have tried to promote a model where, if venues become aware of planning around them, they immediately try to find out more information about it and notify our emergency response service so that we can assess whether, if those developments go ahead, they are likely to lead to noise complaints in the future.

In the instance of King Tut’s, it is similar to what happened in the case of Womanby Street in Cardiff; the developments are largely residential—I believe that there was a hotel as well. The concern

when there are proposals to develop residential accommodation or accommodation where people will be living or staying overnight is that, in an area where previously the other activity was in the daytime and the venue was one of the only places where things were happening at night, is finding the balance between differing needs in a night-time economy.

Across the whole of the UK, we have seen many instances of music venues that thrived in a particular area of town because it was mostly offices and people left at 5.30 pm. As residential accommodation is created in those areas, the nature of the area changes and you get a conflict because people like the vibrancy of the area but want it to be quiet in their home. Obviously, we all understand that because people have a right to good-quality housing, but if you move to an area that has a night-time economy—which goes back to the zoning issue that Tom Kiehl mentioned—we believe that some sort of balance needs to be sought between enabling the continuation of a night-time economy and cultural activity and good, well-built housing.

**The Convener:** Thank you—that is helpful. A number of members want to come in. Perhaps they will all confirm or otherwise whether they have been to King Tut's. I can confirm that I remember going in on several occasions but I do not always remember leaving.

**Jenny Gilruth:** I, too, have visited King Tut's—

**Alexander Stewart:** Do you remember leaving?

**Jenny Gilruth:** I do remember leaving, yes. I think that I was asked for ID at the time, so that is how long ago it was.

I would like to drill down a wee bit on Graham Simpson's point, because he spoke about the cultural significance argument that Beverley Whitrick has made concerning grass-roots music venues. Beverley talked about that designation in practice and, in response to Graham's question, linked it to the Theatres Trust, which has a statutory right to comment on planning applications because theatres are designated as areas of cultural significance. Are there any other benefits that might stem from applying the same rule to grass-roots music venues? Is there any other action that the Government needs to take to protect and promote grass-roots music venues?

**Beverley Whitrick:** That is a huge question. At the heart of our work is the recognition that we seek of the cultural, social and economic status of the grass-roots music venues rather than seeing them as profit-making businesses. We think that it could bring many benefits over time. Obviously this moves into areas beyond planning, but it is to do with the whole way in which they are perceived and therefore protected.

There are very few instances of people moving near a theatre and complaining about the noise. There is one instance—somebody has just moved in behind a west end theatre and is apparently shocked that there is a get-out in the evening and there is noise behind the theatre. However, that is the only example that I know of, whereas across the country, there are so many complaints from people who move near a music venue and then say, "People leave late at night," or, "I can sometimes hear music." For some reason, music venues are perceived as being okay to complain about, in a way that does not often happen for more recognised cultural venues, such as concert halls, opera houses or theatres. We seek a repositioning in terms of practical things, such as which bit of planning legislation applies, but also the more general cultural issue across the UK.

**Andy Wightman:** We have the letter from the chief planner to planning authorities and the planning minister's statement of intent about incorporating the agent of change principle into the national planning framework in future. That framework belongs to ministers and we get very limited scrutiny of it. Scottish planning policy also belongs to ministers and they can change it or break a promise—for example, we might have a different Government that does not implement it when the next national planning framework comes along.

We are keen to hear whether that is sufficient and deals with the question of introducing the agent of change principle, bearing in mind that every application is dealt with on its own merits and on the circumstances and facts of the case. Therefore, nothing is guaranteed. If it is not sufficient, what could we put in the bill? Primary legislation does not normally deal with such questions, because it deals with process. Ultimately, the decision maker makes the decision.

Beverley Whitrick mentioned use classes. I am looking at the Town and Country Planning (Use Classes) (Scotland) Order 1997, and there is nothing in it on music venues. Is that an issue that needs to be addressed?

**Beverley Whitrick:** I know that Tom Kiehl has something to say. We have had many discussions with Governments in the various bits of the UK on that question. When policy is created for cultural venues, people say that they knew that it was intended that grass-roots music venues would be covered, but the space between what is intended by the person who wrote the policy and how it might be interpreted at local authority level is proving a real issue for our venues. It might have been intended that music venues would be seen as cultural venues, but if someone in the local authority does not perceive a particular venue as that, they can say that a cultural venue is a

theatre, not a grass-roots music venue. It was great that the minister's letter specifically mentioned music venues and spoke about protecting them and recognising their cultural importance. We would like to see more of such specification, because it is explicit and does not leave room for interpretation.

I will give an example of the interpretation issue in England. A local authority strongly supported a music venue—the Fleece, in Bristol—that was subject to redevelopment. The council told the developer, which was converting an office block next to it, to have non-openable windows on the side of the building that overlooked the venue. That was agreed, but the developer then went to the Planning Inspectorate—I know that Scotland does not have a planning inspectorate, but the mechanism is similar—and said that it did not have to do that, by point of law, as it was a council recommendation rather than a legislative requirement. The Planning Inspectorate agreed with the developer's lawyer, overturned the council's decree and had it pay the expenses. Bristol City Council is now wary of supporting venues, and six venues in Bristol are currently endangered by development. A board member who is a barrister says that the issue is to do with the grey area between policy and legislation, where it is known what is intended but there is wiggle room. A developer that has determination and money can often find that space and say that it does not really have to do what was intended.

12:30

**Andy Wightman:** Some of the parallels there might well apply in the Scottish case, but I cannot be sure. You now have an opportunity, given that we have a couple of months before we produce our stage 1 report. As a committee, we need to be very clear about what we can do to buttress the argument that you are making if we think that it merits our doing so. We are not the Government; we are part of a Parliament that is making a law.

In that respect, it would be helpful if you were to come forward with broad amendments—not the black-and-white letter of them, but wording that says “place a duty to” or whatever—because it is hard for us to get to grips with the detail. It would be very unfortunate if we were to find ourselves in a position in which we took the view that the guidance was deemed to be good enough and then, a year down the line, a music venue in Aberdeen or Glasgow was subject to a legal challenge such as the one that you described in Bristol and everyone else said, “We thought that Parliament had dealt with that,” and it had not. I say that as an encouragement—or perhaps more than that; it is entirely up to you, obviously.

**Beverley Whitrick:** It is gratefully received—thank you.

**Tom Kiehl:** In some respects, this might be an opportunity for the committee to tease out the legally binding nature of the changes in the bill and to what extent they strengthen the statutory provisions.

The announcement that was made in England in January was very clear. In its statement, the Government said that the proposals would be legally binding. As I have said, there is a real opportunity for the committee to draw out that point. There is the potential to have an amendment that would place a duty on planning authorities to prevent unreasonable consequences for existing businesses. That could double up and support the recent policy announcements, which would be very helpful in that regard.

Beyond that, as I have said, there could also be a requirement for developers—particularly when they propose something that makes noise, such as a speedway track or a music venue, which will impact on an area—to set out exactly how they plan to address those issues and to provide information that future residents could access. Those are example of concrete areas in which amendments to the bill could be lodged. We will happily go away and look at how the issue could be addressed further.

**Andy Wightman:** You have come to give evidence and we have received written evidence, and that is it. However, there is a counterargument that a grass-roots venue might be on its knees and might not be performing very well, while there might be a very large redevelopment plan that is strongly in the public interest. Not all music venues fail, but it does happen. We would be concerned about the idea that a small failing business could hold to ransom development that is in the public interest. Therefore, do you agree that it is vital that we get the duty or obligation right and give appropriate discretion to planning authorities?

**Tom Kiehl:** Yes.

**Beverley Whitrick:** Yes.

**The Convener:** I wonder whether we could look at a couple of other points. I was very intrigued to see that the Music Venue Trust said that development plans could have designated areas of cultural significance. What would be the advantage of that? I am struck by the fact that we have spoken for two hours about local place plans and the idea of trying to work out who the community might be in a particular place in the first instance. In certain parts of Glasgow, we might think of the community as being a creative community as well as a newly residential community that has arrived there or a new hotel that has opened. What would be the benefit of

having areas of cultural significance, and how would they work?

**Beverley Whitrick:** It is a question of defining an area not only for people who might choose to move there, understanding the nature of that area, but of having key parts of towns and cities that are seen as a focus for creative activity. For example, in Montreal, there was a large redevelopment of an area in which an outdoor performance space and creative studio space were created. The accommodation that was built there was aimed specifically at people who work in the creative industries, as they would understand how that area operated and would be comfortable—in a way in which members of the wider community might not—with the fact that it would sometimes be noisy, chaotic or creative.

In the UK, that issue has come up specifically in the Womanby Street area of Cardiff, following a consultation with the Welsh Government planning department, because a number of proposed developments on that street did not take into account the fact that it is a main focus of the live music community in Cardiff. It is not that most of those people live there, but that it is where people automatically go if they want to see live music. There is now a piece of work going on that is about protecting that zone for the cultural contribution that it brings to the city and scrutinising any planning applications to see whether they enhance or endanger that.

**The Convener:** That makes absolute sense, but could that approach have unintended consequences? Not everyone stays in a large urban area with creative or cultural places where they can go for nights out and a range of venues from which they can pick and choose. Some places might have just one venue, which might not have started off as a venue for performance, but in smaller towns and rural areas it might be the only place where people can go for that kind of thing. In an area that is not of cultural significance, could the unintended consequence be that it would weaken the music venue?

**Beverley Whitrick:** It is a real concern to make sure that, if zoning or culturally significant areas are referenced, that is done on the understanding that it is appropriate for large towns and cities but not for the whole of the country. I absolutely agree that in many towns there will be only one or two cultural venues; of course, there is no zone—they just are where they are. The vast majority of our venues are not purpose built—they are almost all conversions from something else into a music venue, so zoning is really an issue for major towns and cities rather than one for everywhere.

**The Convener:** Okay. Before I bring in other members, the key question is whether you think that the Scottish Government's proposal will

impact on the decisions of local authorities that are currently considering noise complaints against existing venues. My understanding of the Scottish Government's position is that there are existing provisions, which will be beefed up in a few months' time, and it has reminded local authorities of the powers that they already have. Do you have any sense that local authorities will be watching any of the current developments? Might they temper some of the decisions that they make?

**Tom Kiehl:** The communication that goes from the Scottish Government to local authorities is key. This is obviously a pivotal moment, as a piece of proposed legislation is going through the Scottish Parliament that will make some changes. The recent changes were well communicated last week, but if there are existing provisions that have not previously been enforced, that suggests that there has been a failure to communicate them adequately. Maybe the industry, Government and local authorities could work more collaboratively on how to communicate such changes.

**The Convener:** That is a question for us to ask the minister when he comes to the committee. I have one further question and then Alexander Stewart has indicated that he wants to raise an issue.

We are talking about music venues—in other words, places where live music is the core purpose and not the kind of add-on it is in a place that serves food but gets in someone with a guitar just to drum up some business. Those are good venues, too, but you have made the distinction very clear. In that case, then, should the agent of change principle be extended to cinemas, theatres and so on? Once the principle is established, we need to decide to which industries it applies. How widely would you apply it?

**Beverley Whitrick:** When the Music Venue Trust first started talking about the agent of change principle in 2015, we were approached by a glorious array of different businesses and people who, first, could not believe that it was not already the law of the land, given how logical it seems, and, secondly, said, "This is brilliant, because it would stop the silly thing that happened to me from happening."

I can give you a couple of examples of the sorts of things that have come up. A housing development was built very near to a speedway track in England, with a street called Speedway Close. People bought the houses and moved in, and they immediately started complaining to the local council that they were being disturbed by the noise from the speedway track.

**The Convener:** Maybe they had no idea that there was a speedway track there. [*Laughter.*]

**Beverley Whitrick:** We also heard about a couple who moved to a countryside village and immediately put in a complaint to the local council that the church bells were disturbing their peace. We are absolutely delighted that the minister has specifically referenced music venues in the agent of change principle, but any policy or legislation in that respect could have ramifications with regard to other applications and might help people who have something that already exists and are being questioned by somebody who has just moved in and has said, "I don't like that."

**Tom Kiehl:** To build on what Beverley Whitrick has said, I think it important to recognise that, although the bill concerns planning, there is a crossover with the licensing system. We cannot forget about that, because the planning and licensing processes should be more joined up. In some ways, decisions are made at a planning level and there is a need to pre-empt the licensing challenges that might come up further down the line.

In fact, a recommendation that emerged from the House of Lords's long-standing inquiry into licensing in general in the previous Parliament was for more planning and licensing committees to be brought forward and for those decision-making processes to take place much more in tandem. If that comes within the bill's scope, it might be a positive move to look at how that sort of thing can be developed to help with some of the issues that we are concerned about. I understand that the bill is purely about planning, but there might be issues around that that you might want to consider.

**The Convener:** It is good to get that on the record.

**Alexander Stewart:** My point is similar to the one that Tom Kiehl has just made, and it is about the practicalities of ensuring that planning and licensing are more aligned. You have identified the possibility of bringing committees together. What other practical processes should be identified to try to alleviate some of the difficulties that have come up in other locations?

**Tom Kiehl:** We have been talking more generally about how the music industry can work more collaboratively with local authorities and with planners, and I would note the success that we have had in London, with a music board being set up to bring a lot of these issues together. There is a question about the extent to which you can deal with some of these problems offline. How can you create structures that enable the music industry to have frank discussions with planners and licensing people, whom they do not necessarily talk to, and how can that be developed further? It would be positive if that was developed in Scotland too, particularly in some of the large urban areas such as Glasgow and Edinburgh, which have well-

developed music industries, in order to create the forums that would enable some of those discussions to take place. You would not have to get into legal or legislative problems, because you could head things off earlier.

**Beverley Whitrick:** A few years ago, I did a piece of work for the City of Edinburgh Council on the inaudibility clause that involved quite a lot of discussions about how a complaint to the council was handled. One of the things that struck me particularly forcibly was that the complainant was always considered to be the council's client and the noise maker was therefore the defendant. I stated in that piece of work that it was almost as if the council had already decided who the guilty party was, just by the way in which it handled the complaint. I believe that there is a lot of room for reinforcing recommendations made through planning with regard to the way in which councils deal with any noise complaints that might come up afterwards. It is not very helpful if you do not view it objectively, or if you say, "Well, that person complained, so they must be right."

**Monica Lennon:** Most of the key points have been covered, but there are a couple of things that I would like to ask about. Tom Kiehl mentioned Australia in his opening remarks. The approach there is to enshrine the agent of change principle into law, and it would be good to get more information on how that has been going. As far as the practical nuts and bolts are concerned, I know that we cannot talk about individual planning applications here today, but I wonder what the experience has been of venues that have had to make representations, buy in expert advice or undertake their own noise impact assessments. What is the practical side of that, and what are the costs involved?

We have touched on the synergy between licensing and planning. In Scotland, councillors who sit on licensing boards have to undergo training and sit a test, and the bill proposes that a similar test should be taken by people who sit on planning committees. Do you have a view on that?

Earlier this morning, we spent a lot of time talking about rights of appeal. The venues that you represent have been extremely involved in the planning process. Do you think that they would have a view on whether they should have a right to appeal when a decision does not go their way?

12:45

**Beverley Whitrick:** I will do my best to comment from the point of view of music venues. Obviously, it is disappointing that our venue representatives were not able to join us today, but I will tell you what I know from the Music Venue Trust's side of things.

The main thing to say is that letters from a local council are extremely scary to most people who own a music venue. If they receive one, whether it is a noise complaint or a notification of planning nearby, the first thing that they are likely to do is panic, because they already have a full-time job running the venue and doing other things and, when asked to confront an extra challenge, they often feel very unprepared for that and that they do not have the time to cope with it. The Music Venue Trust offers an emergency response service. Any music venue within our music venues alliance network across the country can ask us for expert advice. We have a number of what we call gurus—our planning, licensing and legal experts—who support people with advice. Obviously, however, that can go only so far, so there is a cost implication if it takes a long time to handle the case against a planning application.

The other thing to say is that there are issues around multiple developments. In the case of King Tut's, for example, there have been three developments in a five-month period. That represents a huge extra time burden as well as a potential financial burden for a business that is quite poorly resourced anyway. A lot of our venues are run by extremely small teams, so the person who has to get their head around the planning policy, figure out what they have to do to respond, talk to the lawyers and so on is probably also the person who is cleaning the toilets, rolling in the beer barrels and welcoming the band. It is a huge challenge for a small business to deal with an extra factor on top of what they already do. Although we try to offer support, we are also a small organisation and we are stretched with regard to the resources that we can offer.

The situation is better than it was a few years ago but it is still extremely challenging for the sector to try to cope with those external factors, which can have a big impact on their day-to-day existence.

**Monica Lennon:** With regard to the situation in Australia, have venues there reported that some of the uncertainty and burden that Beverley Whitrick described has lessened?

**Tom Kiehl:** I understand that the Australian situation has worked quite well, although the people there are having slight issues with the fact that a geographical limit is applied to their version of the agent of change principle—I am not sure what the radius is, but the rules can apply only within a certain distance. That causes some problems because, when you are dealing with noise, it is often hard to determine exactly how far sound might travel and what impact that noise might have on other areas. I know that attempts are being made to improve that so that the approach is more about the vicinity rather than

about putting in place a jurisdiction within which the principle would apply.

On the point about training, it would be important for that to take place. The more that can be done to ensure that those who are working within planning institutions understand the various aspects fully, the better.

**Monica Lennon:** It is useful to get an overview of what is happening throughout the UK. It would be good if the bill could result in Scotland's approach leading the UK. Is there another opportunity, perhaps through building regulations or building standards, to make progress in that regard? For example, if a developer knew that there were certain minimum requirements in terms of retrofitting buildings or constructing new buildings, would that give us an opportunity to tackle some of the issues? If such requirements are codified in the building regulations, would that negate the requirement to deal with issues in planning legislation?

**Tom Kiehl:** I would have to look into that in more detail before giving a specific commitment. However, the more tools that are available to Government to achieve the aims, the better.

**Beverley Whitrick:** I would just add that Scotland is already leading the way as a result of the letter that the minister issued to local authorities. Having such a strongly worded message directed at local authorities has not happened anywhere else in the UK. Scotland is already at the forefront.

**Monica Lennon:** Excellent; that is what we like to hear.

**The Convener:** That is a lovely way to end this evidence session—please capture that, everyone.

I thank you both for giving evidence. Obviously, the weather defeated our attempts to hear from other witnesses, but we are grateful to them for their willingness to make themselves available. We are also grateful to both of you for your willingness to wait for a significant period of time before giving us your evidence. Thanks again—please continue to follow the committee's work on this matter.

## Subordinate Legislation

**Local Governance (Scotland) Act 2004  
(Remuneration) Amendment Regulations  
2018 (SSI 2018/38)**

**Council Tax Discounts (Scotland)  
Amendment Regulations 2018 (SSI  
2018/39)**

**Council Tax (Exempt Dwellings) (Scotland)  
Amendment Order 2018 (SSI 2018/45)**

12:50

**The Convener:** Under agenda item 2, the three instruments before us are laid under the negative procedure, which means that the provisions will come into force unless the Parliament votes on motions to annul them. No motions to annul have been laid.

If members have no comments to make, I invite the committee to agree that it does not wish to make any recommendations in relation to the instruments. Are we agreed?

**Members** *indicated agreement.*

**The Convener:** We move into private session.

12:51

*Meeting continued in private until 13:03.*



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The deadline for corrections to this edition is:

**Friday 30 March 2018**

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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