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GENERAL COMMITTEES

Public Bill Committee

GROWTH AND INFRASTRUCTURE BILL

Second Sitting

Tuesday 13 November 2012

(Afternoon)

CONTENTS

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The Committee consisted of the following Members:

Chairs: † Philip Davies, Mr George Howarth

† Birtwistle, Gordon *(Burnley)* (LD)
† Blackman, Bob *(Harrow East)* (Con)
† Blackman-Woods, Roberta *(City of Durham)* (Lab)
Blomfield, Paul *(Sheffield Central)* (Lab)
† Boles, Nick *(Parliamentary Under-Secretary of State for Communities and Local Government)*
† Bradley, Karen *(Staffordshire Moorlands)* (Con)
† Coffey, Dr Thérèse *(Suffolk Coastal)* (Con)
† Dakin, Nic *(Scunthorpe)* (Lab)
Danczuk, Simon *(Rochdale)* (Lab)
† Fallon, Michael *(Minister of State, Department for Business, Innovation and Skills)*
Glen, John *(Salisbury)* (Con)
Glindon, Mrs Mary *(North Tyneside)* (Lab)
Howell, John *(Henley)* (Con)
† Morris, James *(Halesowen and Rowley Regis)* (Con)
† Murray, Ian *(Edinburgh South)* (Lab)
† Raynsford, Mr Nick *(Greenwich and Woolwich)* (Lab)
Simpson, David *(Upper Bann)* (DUP)
† Smith, Henry *(Crawley)* (Con)
† Stunell, Andrew *(Hazel Grove)* (LD)

Steven Mark, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Witnesses

Harry Cotterell, President, Country Land and Business Association

Liz Peace, Chief Executive, British Property Federation

Edward Cooke, Director of Policy, British Council of Shopping Centres

Gavin Smart, Director of Policy and Practice, Chartered Institute for Housing

Andrew Whitaker, Planning Director, Home Builders Federation

David Orr, Chief Executive, National Housing Federation

Ruth Reed, Head of Planning Group and Past President, Royal Institute of British Architects

Toby Lloyd, Head of Policy, Shelter

Public Bill Committee

Tuesday 13 November 2012

(Afternoon)

[Philip Davies *in the Chair*]

Growth and Infrastructure Bill

2 pm

The Committee deliberated in private.

Examination of Witnesses

Harry Cotterell, Liz Peace and Edward Cooke gave evidence.

2.4 pm

Q87 The Chair: We will now hear oral evidence from the Country Land and Business Association, the British Property Federation, and the British Council of Shopping Centres. First, I ask our three witnesses briefly to introduce themselves.

Harry Cotterell: I am president of the Country Land and Business Association. We have 34,000 members, covering 250 different types of rural businesses.

Liz Peace: I am chief executive of the British Property Federation. We represent primarily the commercial property sector in the UK. That is shops, offices, industrial and a whole range of other things that now fall into the category of commercial property.

Edward Cooke: I am the director of policy and public affairs at the British Council of Shopping Centres. Our members are investors and developers, but also occupiers of shopping centres across the UK.

The Chair: Before calling the first Member to ask a question, I remind all Members that questions should be limited to matters within the scope of the Bill and that we must stick rigidly to the timings in the programme motion that the Committee has agreed to. I hope that I will not have to interrupt anyone mid-flow or mid-sentence, but I will do so if I have to.

Q88 Roberta Blackman-Woods (City of Durham) (Lab): Will the panel tell us whether they are broadly in support of the measures in the Bill, and will they quantify the benefits that they expect their members to derive from the Bill's changes to the planning system?

Harry Cotterell: Broadly, we are very much in favour of the Bill. Our members are effectively small business men and women. I do not think there are any of them who do not want to grow their businesses. We are keen on the emphasis on growth.

We are very keen on the planning aspects, because planning is a business that virtually all our members get involved with at some stage in their lives, and it is almost impossible in rural areas to expand, grow or start up a new business without getting involved with planning. Therefore we welcome the moves that are planning-focused, although we would emphasise that planning will not necessarily deliver growth without the economic boost and climate for our members to make business decisions that will expand their businesses.

Liz Peace: We have a somewhat ambivalent attitude towards the Bill. We are not against any part of it; we can see why it is valuable for development.

A number of my members are quite nervous about the provisions for an applicant to go over the head of a local authority, either to the Planning Inspectorate or to the Secretary of State, on the basis that my members' developments require a long-term relationship with a local authority; generally, they want to go back to do something else in a couple of years' time. They are nervous that if they take the fairly draconian action, their future relationship with that local authority would be severely damaged. Having said that, they do appreciate the need to try to take some of the excesses out of the planning system, because it certainly is a problem in a lot of places and with regard to a lot of individual developments.

My members have told me that they are happy with the Bill and to see it go forward. They would not expect to use it very often. They probably see its major value as being in deterrence—almost pour encourager les autres. Those are the planning provisions.

The one part of the Bill that my members are deeply concerned about is clause 22 and the rating revaluation, which has absolutely nothing to do with the rest of the Bill. I have no doubt that someone will want to come on to that specific one. That, we are wholly opposed to.

Edward Cooke: From BCSC's perspective, on average it takes more than 10 years to deliver a shopping centre scheme, which is a significant amount of time, given all the economic and social benefits that are delivered through those investments in towns and cities. Any motivation to speed up that process should be encouraged. Therefore, the Bill, in terms of its aspirations, is to be welcomed.

As Liz has said, there are often bigger issues than planning to face when delivering such significant investments, not least loans from capital markets and financing development, especially in today's climate. This is the first year since we have been collecting records—since 1983—that no new town-centre shopping centre scheme is being built.

On clause 22, we wholeheartedly oppose the Government's intention to revalue in 2017 as opposed to 2015.

Q89 Roberta Blackman-Woods: Mr Cotterell, you mentioned particularly problems encountered by your members with the planning system. How widespread do you think the problems are with planning and, in particular, how many poor authorities do you think there are?

Harry Cotterell: It is difficult to say the problem is there, because we are waiting for the national planning policy framework to be bedded in effectively. A lot of local authorities have yet to come to terms with the realities of the NPPF, and we have to watch that process. We think that the NPPF will greatly improve the planning environment for small businesses in the rural areas and we are very much in favour of the presumption. We think that is good news.

The problems our members encounter most are the bureaucracy, and the size and scale, of the system. Predominantly, our members are small developers, and

often it is just a case of extensions to an existing business. Quite a lot of the measures in the Bill will ease that. We are very keen that applicants do not have to provide as much information. We think that will be a great improvement and encourage more people to bring developments forward. In terms of actual authorities, I cannot name which ones are particularly good or particularly bad, but there is plenty of information already in the public domain that gives you an indication.

Liz Peace: The information point is a very interesting one. While we are at that part of the Bill, it is great in principle—a pronouncement that there will be a requirement for less information is excellent—but how do you implement it? What sort of sanctions do you have? Someone standing up and declaring that motherhood is great? What we actually need is the follow-up on that.

We have been waiting for some time to see how the Department proposes to implement the 12-month planning guarantee and, indeed, the details of how you manage information requirements and limit some of the extent of, dare I say it, useless information and the padding that goes with planning applications. Planning applications for major schemes are delivered on forklift trucks these days, not in envelopes or through the post. That has got to be wrong. That has got to be susceptible to being controlled and reduced, but we would like to know a bit more about how you do it rather than just a fairly bald clause in a Bill.

Q90 Roberta Blackman-Woods: That is very interesting. Do you have actual evidence from your members about particular schemes being stopped or unduly delayed, or are you basing your comments on anecdotal information?

Liz Peace: Evidence from members is to some extent anecdotal because they come and tell you what has happened, how many referrals they have had to have to a planning committee and how much information they have had to deliver. If you just look at some of the major schemes over the last few years—King's Cross, Nine Elms, Battersea—and at the complexity of what is actually being required, you have to ask yourself whether this is a good use of everybody's time.

I often wonder who wades through these vast tomes of information. I assume that local authorities must hire consultants to do it. I do not believe anybody can grasp it all and form a view of its value and, therefore, get to the nub of the scheme. There are a lot of things driving this: Europe, to some extent, the threat of judicial review. We could cite many different examples from different companies.

Harry Cotterell: Our point would be that a lot of the information that is required is not really necessary for a very small development or small proposal. Secondly, a large number of local authorities in the rural areas charge for—or do not allow—pre-application consultations, so the first contact with the planning system is when the application goes in. Thirdly, the local authorities will use a photocopied list of documentation required, which is the same regardless.

The number of our members who live on the top of a hill who have said they have required flood risk assessments, which is plainly ridiculous but very rarely costs less than £1,000, is huge. All my evidence is anecdotal, but I have plenty of examples of ridiculous requests from local authorities for pre-application information, mainly relating to flood risk assessment, environmental assessments and stuff that goes on in conservation areas, which is irrelevant on modern buildings but requires conservation-type assessments.

Q91 James Morris (Halesowen and Rowley Regis) (Con): I want to ask about clause 21, which is about planning decisions being able to be, as it were, escalated up to the national infrastructure planning system. What is your reaction to that clause?

Liz Peace: Some years ago when the regime under, I think, the 2008 Act was being discussed, we argued strenuously that major town and country planning schemes—not the ones covered by the Infrastructure Planning Commission, which were covered by different legislation—and big development schemes ought to be allowed to go through the IPC regime. We were firmly batted down and told absolutely not—

Q92 James Morris: Sorry to interrupt, but what do you think the threshold should be?

Liz Peace: I do not have a particular view in numerical terms, but, as an example, a development of the scale of something like King's Cross would have been a sensible one to take through a major infrastructure projects regime. Frankly, we are now less convinced that that is the right route, until we can be absolutely sure that the IPC regime is indeed faster. The national policy statement relating to that piece of infrastructure is what facilitates its fast progress through the scheme. If you are talking about a big general development as opposed to a specific piece of infrastructure governed by the NPS, we are not absolutely convinced that this is now the right answer. It needs a further layer of thinking to make sure that there is a plan against which it can be rapidly judged.

There is also one particular, rather strange bit in the clause, which explicitly excludes projects that include

"the construction of one or more dwellings."

That would take out most mixed-use schemes. These days, most big schemes are indeed mixed-use schemes: Battersea, King's Cross, Elephant and Castle, and Liverpool One are all mixed-use schemes. There is an element of residential, so I am not absolutely sure what the logic is in that phrase.

Q93 James Morris: Any other thoughts?

Edward Cooke: From my perspective, shopping centre investment delivers a huge amount of local infrastructure, which is of huge value to communities. In a large scheme, it can be tens of millions of pounds, so we want to find a way to ensure that that continues to be delivered as speedily as possible. We have talked for a long time about tax increment financing being used as a mechanism that might enable that to be private sector-led. However, the BCSC as an organisation is 100% supportive of town centres versus a concept articulated very clearly in the national planning policy framework. We would like to see that delivered more consistently across local authorities.

Q94 James Morris: What about clause 21 of the Bill?

Edward Cooke: It is a question of whether commercial development and in particular retail development should be considered within that. We have reservations because

our primary focus and support is with the "town centre first" planning policy within the NPPF, so we would want to ensure that that is protected.

Q95 James Morris: Do you think this might be a contradiction?

Edward Cooke: Until I see the detail of what will and will not be included, it is difficult to know at this stage, but it could easily be.

Q96 Mr Nick Raynsford (Greenwich and Woolwich) (Lab): This morning, we heard Ministers saying that they were introducing clause 22 to give greater certainty to business and to save business from unacceptable costs. We have heard both the British Property Federation and the British Council of Shopping Centres say to us very clearly that you are wholly opposed to clause 22. Could you explain why you object?

Liz Peace: The current business rate bills are based on the 2010 revaluation, which was in turn carried out effectively in 2008, which means that places that have declined significantly since then were hoping for a degree of relief from the revaluation in 2015, for which of course the evidence would start to be taken next year. We understand entirely that business rates are a sort of closed loop system, a redistribution, but it seems to me that this is absolutely set in stone—the business rates for those places that have been least successful and that would have looked for relief. That is exactly what the Government have not wanted to do. They want to bring relief to places that are suffering.

Some of our members, Gerald Eve in particular, have done an assessment for us and suggested that retail in the north-east and north-west, offices across England—the north-west, the west midlands, the east and London—and industrial in the east will lose from this postponement. Parts of the economy are suffering, and it seems absolutely bizarre that you want to lock in their suffering for another couple of years. That is why we are fundamentally opposed to this. We accept that some areas that would have risen will not rise. Is that fair when their values have actually gone up and they might legitimately have been asked to pay larger rates?

Edward Cooke: The principle of the system is to redistribute liability so that those who have fared comparatively well pay a greater share of the rates bill. Those with the broadest shoulders are supposed to bear the greatest burden, and we think that the change to a 2017 list will have the opposite effect. We know from the Valuation Office Agency data—sketchy as it is—that the north-east and the north-west, from a retail perspective, will suffer most from the change in Government policy. They are the areas that need the most support. We appreciate the Government's support for town and city centres—the work they have been doing with Mary Portas and others, including ourselves. We think this completely contradicts where the Government are coming from in that area.

We question the viability of the data that is being produced by the VOA. In its own words, the data is based on very limited market evidence—I am not sure of the size of the sample; it would be interesting to hear what that may have been—and it is not subject to the rigour of moderation or validation, so there are some big question marks over it and, therefore, the outcome of its assumption that 800,000 assessments would be better off. It clumped 530 into this group of "other", and then made a bunch of assumptions about whether the valuation would increase. Indeed, it assumed that it would be in line with bulk classes, for which the evidence is fairly woolly to say the least.

Q97 Mr Raynsford: May I ask you to take a slightly wider look? In contrast with business rates, which are subject to regular, five-yearly updating, council tax has proved politically impossible for any Government to revalue since 1991, so we are locked into a notional 1991 value. Do you see a potential risk that, if postponement of business rates becomes politically acceptable, there could be a move towards a similar trend, where it becomes impossible to make a revaluation?

Edward Cooke: I think that if the justification is to create certainty to business, then shifting the goalposts, as has been proposed, does quite the opposite.

Liz Peace: For a business, business rates are a significant cost. You would expect the cost to reflect economic circumstances. If they cease to reflect economic circumstances, that is going to be bad for businesses. Frankly, as an industry, we would prefer more frequent valuations. We actually think this five-year cycle is somewhat unfortunate, especially because you have this time lapse when it is actually done, but that is probably another subject.

Q98 Mr Raynsford: Finally, may I ask whether you feel that the transitional relief mechanism is the more appropriate means for dealing with short-term, adverse consequences of lifts in liability?

Edward Cooke: It does serve that purpose. Our thinking was that if we had had a revaluation in 2015, we would have started to question the justification for transitional relief because we would have wanted to see the benefit of reduced rates bills in the areas where businesses really need supports to kick in as soon as possible. We did not get to the stage of having that conversation properly because this was presented to us out of the blue.

Q99 Andrew Stunell (Hazel Grove) (LD): May I go back to the point you made about developers not wanting to go to the Planning Inspectorate because of preserving their longer-term relationship with local authorities. Could you explore that for me a bit? The traditional thumbnail sketch, if I can put it that way, is that this is a very confrontational set of relationships. I was interested in your point about that.

Liz Peace: It is difficult to generalise about relationships. The members I represent tend to be public listed companies, big institutions and traditional family estates, who take their community responsibilities very seriously. They will tell you that they spend a lot of time, money and effort on consultation. They try, on the whole, or always, to do a development with the support of local communities. You have also to remember that with commercial property, it is quite likely that the people who are making the development will actually stay there and manage it, so they have a long, ongoing relationship with an area, which is another reason they put such a lot of effort into community consultation.

It can be deeply frustrating going through that process, and they would certainly, without any doubt, like it to be quicker and less costly. The old adage that time is money is entirely true, because of course you are paying interest charges on your debt during a long negotiation. But if you scratch most of them, or push them really hard on this, they would say that they have to balance very carefully the benefits of saving a year or so by going straight to PINS over the head of a local authority against the longer-term relationship.

Look at all your shopping centre members, all my major development members—they go back a few years later to do a second phase of the development. A local authority is not likely to be terribly sympathetic towards them if they have had an adversarial relationship, so their interest is in building as good a relationship as they can. It is not perfect, it never is, and they fall out over various aspects, but generally speaking I think that they would not necessarily see this measure as being massively helpful for them. They may be prepared to let other people do it rather than lead themselves. As I said, we do not oppose this. I am simply saying that I would be quite surprised if I saw a lot of my members in the commercial world taking advantage of it.

Q100 Andrew Stunell: Can I take the other half of that? You said that if they could save a year, maybe there would be a trade-off. What level of saving would actually trigger that trade?

Liz Peace: I do not think you could generalise, because it would depend on the economic circumstances of the company. A lot of companies will of course have incurred a substantial amount of debt in buying sites, and they have to service their debt, so it is always a fairly finely-tuned decision as to whether you do the scheme at all—whether it meets your internal rates of return and is actually worthwhile for your investors, for your savers, for the pensioners who depend on you. I suspect that companies would push very hard not to be driven into the position of ultimate confrontation that this offers. The hope would be that it would be a deterrent, or an encouragement to local authorities to be reasonable.

The best example, indeed it is one cited by Ministers in the Department for Communities and Local Government, is how Land Securities has managed to reach a compromise with the authorities around the whole affordable housing component of the development down at Kent Thameside in Ebbsfleet. That can be achieved by negotiation—they have done it through negotiation, and they would infinitely prefer to do it that way.

Q101 Nic Dakin (Scunthorpe) (Lab): To return to clause 22, the Bill is titled Growth and Infrastructure, but you seem to be saying that the clause will have the opposite effect in those areas of the country that had expectations of, to use your phrase, "relief" from 2015. Am I picking that up correctly?

Liz Peace: Absolutely right. Both Edward and I have been very focused on the retail sector over the past year because we have been heavily involved in the Portas review and discussions with the Department for Communities and Local Government about how to implement it. If you look at retail vacancy rates in some of the northern towns, they are as high as 30% or 33%. These are places that are struggling, and business rates are a big component of business costs. If places feel that they were going to get some relief and they are now not going to get it, that is not really going to help them. It could be the thing that drives them into bankruptcy.

Q102 Nic Dakin: What you are saying is that this will quicken the decline of the high street in those parts of the country.

Liz Peace: Yes.

Q103 Nic Dakin: You also said that it will impact badly on manufacturing in those areas of the country as well.

Liz Peace: Certainly what we have done through the good offices of one of our members, Gerald Eve, whose staff are experts in rating data and have submitted a substantial amount of evidence directly to your Committee, is assess who the winners and losers would be. If it is not actually in the letter sent to you, I am sure that Gerald Eve would be happy to give you further details. As I said, it has concluded that office property would also suffer badly across the whole of England under the all-England figures. It is particularly picked out in the north-west, the west, the west midlands, the east and London, which covers most of the country. It is certainly fixed on industrial in some areas, but that is not a universal picture.

Q104 Nic Dakin: Earlier, Ministers were saying that there were more winners than losers by the delay, but you do not agree with that.

Liz Peace: We do not believe that, frankly.

Edward Cooke: One point on the costs conversation is that business rates are often presented as a cost to retailers, and evidently it is the occupier that pays the business rate, but the incidence of the tax does not always fall on the occupier. That is an important point in the context of town and city centre investment. It is often the investor or the landlord who ends up either indirectly footing the bill through reduced rent or directly contributing—increasingly so—to the rates bills of that retailer. In any development appraisal or investment appraisal, business rates are increasingly taking up a larger and larger proportion of the overall costs of occupancy. That is having a negative effect on investors' ability to make those investments in towns and cities. It is not just a retail issue.

On the point about the data, we feel—we are collecting our own evidence at the moment—that to assume that 800,000 hereditaments would be winners, when you are looking at 530,000 within the other category in the VOA's assessment, is not a sufficiently detailed analysis on which to make that assumption. Page 8 of the VOA's estimates tells us that in those 530,000, it is including assets such as stables, police stations and cinemas. Those are all categorised together and the same assessment as for the bulk classes is applied. They are very different things. They are very different asset classes and have performed very differently over the past three or four years. The level of detail in the data that have been produced is not sufficient in our mind to say that 800,000 business or hereditaments would benefit.

Q105 Nic Dakin: If you were writing a clause 22 on business rates for this, taking the opportunity of the Growth and Infrastructure Bill, what would you put in it?

Liz Peace: We would just take the clause out completely.

Edward Cooke: Yes. Take the clause out in the context that if you wanted to have a clause in the Bill on how to use business rates to incentivise growth, it would have to reduce overall costs to incentivise demand, which business rates are not doing currently. That is probably one step too far.

Q106 Bob Blackman (Harrow East) (Con): We have heard evidence about the fall-off in the approval rates of major planning applications, particularly within the time scales that are required. I wonder whether there are particular parts of the country or particular planning authorities where your members have had a bad experience? What view would your members take on the clauses in the Bill?

Harry Cotterell: I am nervous at pointing the finger in any particular direction, but anything that can focus on the quality of planning in local authorities will be a good thing, because users of the system have found that, apart from the bureaucracy and cost, it has in quality terms diminished over the years. That is for a number of reasons, not least of which is the lack of resources. Going forward, anything that can improve the quality of planning delivery in local authorities is to be welcomed. That is why we do not have as much of a problem as the other two organisations do with the proposal where you can go directly to the Planning Inspectorate. Although our members would virtually never use it, because the scale of their developments is so small, we think that were the sanction available, it might improve the quality of planning departments. I really do not want to get into the geographical bit.

Q107 Bob Blackman: I understand that. Is it smaller planning departments that you have problems with, or is it larger authorities where there may be more planning officers? Is there something in there that is of concern?

Harry Cotterell: The difficulty is that there are so many problems. There is cost, bureaucracy and the speed of application. When a small business man is confronted by all of those, he is tempted not to apply. I always think that the figures that are used to demonstrate the number of applications that actually achieve planning are a complete distortion of the success and competence of the planning system, because our members do not actually get to apply. They take a look at the system; they may have a pre-application discussion with a planning officer, where that is available; they are confronted by a massive barrage of requirements, reports and whatever for probably a relatively modest development; and they say, "Actually, I don't think I'll do it." That is the key for small, rural business men, and I think that that is fair to say. The numbers that are in the public domain add up, but rural planning authorities probably do not achieve as well as metropolitan or urban ones.

Liz Peace: Our members tell me that those parts of the country that are striving for growth tend, on the whole, to pass planning applications more quickly. Somebody told me in great glee today that they had just got a major planning application through for a very large shed—I think it was in Warrington—in five weeks, so it can be done: the local authority wanted it to happen, and it was part of its growth plan.

The slight worry is that a lot of local authorities—I try to meet as many as possible—tell me that they are open for business and that they have a good record of dealing with planning applications, and ask whether I could please get my members to go there. Regrettably, some of them tend to be in parts of the country where it is quite difficult to get the membership to go. I wish I could, because those places are extremely positive about attracting industry and commerce.

Part of my problem with the Bill is that I am not altogether sure that it addresses the right things. Planning has been an issue for as long as I have worked for the industry, which is more than 10 years now. My members rail against the complexity, the amount of information and the length of time it takes. CLG and the planning department within it have been trying very hard to address a lot of the issues. I think the national planning policy framework is excellent, and that the presumption is excellent, but it is now coming to the next stage—how do you roll it out to make it really happen on the ground?

We are great proponents of planning performance agreements. We do not necessarily think that to complete a complex planning application in 13 weeks is realistic anyway. Actually, what my members want would be a sensible project plan for a period in which that could be achieved. If that is going to be 23 weeks, that is fine, but at least have an agreement between the applicant and the local planning authority about the timetable.

Q108 Bob Blackman: Do you have examples of where planning authorities have obstructed such sensible agreements?

Liz Peace: Planning performance agreements have not been adopted as universally as we would have hoped. I do not know why. We are a small organisation, and I cannot get out and around the country as much as I would like. I suspect that there is a fear in planning departments, and certainly in planning committees, that they do not want to be tied too firmly into a timetable. I think a lot of people—planning councillors and development management committee members—tend to think that planning is something that is open-ended and needs to take as long as it takes. Coming from an industry background, that would not be my view. I think planning should be treated as a project like anything else: you should set a time scale and you should stick to it.

If the Department could look at ways of putting a bit more oomph behind planning performance agreements—perhaps call them something a bit sexier as well, to make it sound as though they are more of a contract, rather than an optional agreement that both sides can opt out of if they want to—that might be quite helpful.

Q109 Bob Blackman: Mr Cooke, I think you said earlier that it took 10 years to get a major development. Are we suddenly going to see planning authorities overridden by your members, saying, "It's a waste of time doing the planning process. Let's just go straight to the national position and try to short-circuit those 10 years to possibly a year. Who knows?"?

Edward Cooke: That would be impressive. Very much as Liz articulated earlier, our members are committed to working with communities to deliver the schemes that they deliver, and that includes local authorities. They need to be onboard to help them to promote them, and very often they are significant partners in a

development, not least through land ownership. In the first instance, it is to try to work collaboratively with all those crucial partners in a local place. As a fall-back position, it may have some merits.

As I said earlier, for us the key thing—Liz has just mentioned it—is local authorities planning positively and proactively for retail development in their town and city centres, which is not happening in the way that we would like, and finding ways to fund the schemes, which is a macro-economic issue. Also, we believe that Government policy in relation to tax increment financing may still have a role to play in that. Planning is a barrier that has to be overcome. I think that you have to be quite smart in the way that you overcome it, and going directly to another level is not necessarily the right approach.

One final thing to say is that there was both a concern about and a really positive aspect to localism. The concern is about the devolution of power to local planning authorities in the way that it is being rolled out, without the skills and resources within those local planning authorities. Naturally, that is a concern, especially for retail development, where there might be one significant scheme in a generation coming to your place. However, the positive aspect is that the officers working within those planning authorities suddenly have much more responsibility; they are empowered. They are doing much more than just ticking boxes and ultimately that should have positive outcomes. What I suppose we do not want to try to do is to find a way of circumventing the new system before it has really bedded in properly.

Liz Peace: I would just like to add one other point. So far, I have managed to avoid mentioning the community infrastructure levy. A few months ago, if you had prodded any of my organisation's members, the thing that was worrying them most—more than is taken account of here in the affordable housing requirement—was the fear of the way that the community infrastructure levy was going. I have to say that the Department has now reacted extremely positively to our concerns, and Mr Boles and his staff have been looking at ways in which we can make the levy better.

One of the interesting things about the community infrastructure levy was that there was no right of appeal. Once you were fixed with a community infrastructure levy, you were stuck with it and the local authority could not grant any exemptions either. That was a rather interesting juxtaposition with what is being offered here and now, which is an appeal over the heads of local authorities.

However, I want to make the point that the community infrastructure levy is currently being addressed and we are very hopeful that the Department will come up with some sensible reforms to it. I think that that is almost more important than some of the material that is in the Bill.

Q110 Bob Blackman: How much of a barrier is the current position on broadband to getting developments delivered?

Harry Cotterell: In rural areas, it is huge. You will never get an office rented if you do not have broadband. It is probably the biggest infrastructure issue in rural areas for conversion—that, and business rates on empty property, which is stopping speculative development. Those two things are probably the two biggest barriers to starting those kind of schemes.

Ian Murray (Edinburgh South) (Lab): My question was about broadband, Chair, and it has been asked.

Q111 Andrew Stunell: Can I just pick up on the proposals in the Bill about changes to section 106 agreements? It might be particularly relevant to rural areas, and Mr Cotterell might want to express a view about that issue in relation to mixed developments and so on. What is your approach to the proposals in the Bill, and do you have any comment on the direction of travel here?

Harry Cotterell: It is quite difficult, because we do not have a long list of members who have developments in the pipeline that are being held back by the 106 requirements, particularly the requirements on affordable housing. Anything I say is therefore based on the fact that I suspect high levels of affordable content in developments for 106 requirements in local authority areas are probably more of a barrier to thinking about a project rather than to starting a development—does that make sense? As I say, we do not have a long list of them, just because our members are hopefully not often above the threshold, but if the threshold is too high a proportion they just will not start the project. They will not even go to planning.

Q112 Andrew Stunell: And in relation to our urban friends?

Liz Peace: Section 106s can be an issue. I can think of one particular example, which I would rather not name, where a section 106 was negotiated in rather happier economic times; it is a large section 106. It is now deemed by the developer to be unaffordable. The local authority in that particular case had promised the town that they would get a whole load of town improvements out of this section 106 and are reluctant to renegotiate it. There appears to be an element of stalemate. That is not specifically about affordable housing; section 106 can cover lots of things.

There are already mechanisms by which section 106 can be renegotiated. In the example that I cited earlier, it has happened, and my members would much prefer to do it by that route. I suspect that the provision may be more useful for volume house builders, whom I do not represent and from whom you are taking evidence separately. I would not want to scupper the clause on the basis that it is probably more useful to them than to my members. However, again, it has a deterrent effect. If it brings local authorities to the negotiating table, where both parties can have a grown-up negotiation about what exactly is feasible in new economic conditions, it will have served a useful purpose.

Edward Cooke: I do not have huge amounts to add, other than that planning obligations can be a barrier to getting schemes away from a liability perspective. Sensible local authorities are engaging commercial developers to revisit those historical obligations. That is the right way to take this forward.

Liz Peace: It is also undoubtedly the case that given the way the community infrastructure levy was going, we said that that was turning out to be an added burden on top of section 106. That would have been a big problem, but, as I have said, I am hopeful that the Minister has taken steps to address that.

Q113 James Morris: On clause 1, we have talked about planning departments. What are your views on the criteria that will be used to judge whether a planning department is performing appropriately, other than time? Are there any other criteria that you would suggest?

Liz Peace: I have always been cautious about trying to set criteria for performance, because they are subject to manipulation and sometimes drive unhelpful behaviours.

Q114 James Morris: Are you suggesting that it is not possible to come up with criteria, or that it would not be helpful to do so?

Liz Peace: I think you have to take a much broader approach, which is why I think special to-purpose targets for individual developments are a much better idea than sort of blanket targets.

Regarding the business of 13 weeks, we have plenty of evidence, from the days particularly when planning performance grants were tied in with that, of local authorities manipulating that number, insisting that applications be withdrawn so that they did not have to show that they had run over the time. That is what worries me about setting slightly injudicious targets for performance. I think you have to be very careful. What you would need to look at is performance against the plan and against particular special to-purpose time scales for individual developments, rather than the sort of blanket "must do x per cent by 13 weeks". To be honest, I have not worked through possible alternatives; I just urge caution on setting performance targets.

Q115 James Morris: Any other views?

Edward Cooke: No.

Harry Cotterell: No.

Q116 Roberta Blackman-Woods: That was an interesting set of comments. I want to tease more out of what you said. Earlier, you said that the greatest benefit of the Bill might be that it will act as a deterrent. I want to know what you think is being deterred, if it is just a bit of tardiness in terms of decision making, whether it is something to be lost by an approach that concentrates just on speed rather than looking at the complexity of factors that can arise locally when an application is being determined.

Liz Peace: I certainly do not believe that it is always about speed, which is why I think that setting a target of a number of weeks is inappropriate. You absolutely could not deal in 13 weeks with the sort of developments a lot of my members undertake. The five-week shed in Warrington was a particular case but, come on, sheds are sheds. If you are doing a complex shopping centre development or a complex mixed use development, you are not going to deal with it in 10, 12,13 or 15 weeks.

What both our members, if I could cross over between them, would like to know is how long it will take and what reasonable period they have to expect. Coming back to the national planning policy framework, tied in is the requirement for a local authority to have a very clear plan. What I have always said to my members is that, if you then put in planning applications that are contrary to a plan and you get a bloody nose, that serves you right for trying it on. You have to have a properly constituted plan for an area that reflects growth against which developers, my members, can come along saying, "Right, you are prepared to accept this sort of development here. Here's my application for it. Now, let's have a sensible debate about how long it would take to get it through." That is my ideal world. I do not see why we should not strive for that situation.

Q117 Roberta Blackman-Woods: That is an argument for certainty rather than speed. Is it one that Mr Cotterell shares?

Harry Cotterell: The difficulty from our point of view is that the majority of our developments are very small scale. These guys were much, much bigger and so we are chalk and cheese on that front. One of the things that we have welcomed recently is the arrival of new permitted development lights for non-contentious conversion of agricultural buildings, which is a recognition that quite a lot of the development that a lot of our members are involved with is virtually of no significance to the wider population, beyond what is going on in a farmyard or whatever. The Government have recognised that, and that is good. Hopefully, it will reduce some of the number of applications that are going in from our members to planning authorities.

Going forward, on the quality of decision making, we need speed or at least we need a good pre-application process. It is difficult to tie in people to, "Yes, there is a good chance that we are going to get this. It is worth going forward" on an informal basis before they start spending serious amounts of money on the application. That pre-application process would be a great help to our members.

Liz Peace: I would not disagree with anything Harry has said, but he is talking about a different sort of applicant. One of the points we have always made is that, if you actually want to increase the availability of resource within planning departments—and resource is a huge issue—you should take a lot of the minor stuff out of it or get it dealt with by planning technicians rather than by fully qualified planning officers. Find ways of freeing up the resource to deal with the big things that are taking a lot of time.

Pre-application discussions are potentially hugely useful, but you have to look at the planning process as a whole, including the pre-application discussions. What we have seen in the past are local authorities that will not actually—I forget the formal term—log or lodge a planning application until you have spent an awfully long time on the pre-application discussions so that they can then meet the fixed target. You cannot measure the process like that; you have to look at the whole thing from beginning to end. We are greatly in favour of pre-application discussions but, as I say, you have to consider this as one whole process and the point at which you get the planning application validated is just one point on that path.

Q118 Mr Raynsford: I want to pick up again on the very interesting points about the difficulty of constructing any list of authorities that have either been tardy or else haven't performed well in processing applications. We have been very conscious of the various lists that have appeared of authorities that are failing on one or other of the indicators. They have produced some rather odd outcomes with rather unexpected authorities like Torbay, and Kensington and Chelsea appearing to be very slow. Authorities like Manchester, which is seen as generally a very pro-development authority is appearing to have

a high proportion of applications overturned on appeal. Therefore, the worry that one has is that any list that is produced is likely to be perverse in that it may include some authorities that are pro-development and not by any means hostile, but equally it might exclude some that are not performing very well. The latter will breathe a sigh of relief and feel that they are off the hook. This is an important point. If we proceed with legislation—Ministers have told us that they are going to construct this list based on objective criteria—are we going to create a monster that will have perverse and unsatisfactory outcomes?

Edward Cooke: We certainly agree that there is such a risk of creating those perverse outcomes and that those criteria will need to be sense-checked very carefully by people who use the systems, such as our members. We would obviously very much afford the opportunity to engage in that process. Our members, the people who operate in these places, are well aware of who is good and who is bad. If you create a list, however, as we have already discussed, that does not assume that our members will go to that list and think, "Great, we don't need to go through the due process." Their starting point, I am sure, will be to go through the due process with the knowledge that there is this list that has been created.

Liz Peace: It is very difficult to wind back the clock and wish that planning was a less complicated process than it is now. We all share that sentiment, but it is difficult to see how you would do it. You also have to bear it in mind in constructing this list that lots of nasty things can come from left field that you are not necessarily expecting. I can cite a particular example. It was not so much a planning application as the preparation of a plan by a group of local authorities—three quite small ones—that were doing exactly what the Government wanted them to do: they were co-operating together. They had come up with an excellent plan for umpteen thousand houses in one particular area and they were completely derailed by a small pressure group that managed to get permission for judicial review. The whole thing was pushed a year to the right, but those local authorities were doing exactly what the national planning policy framework and Government policy required them to do.

Heritage issues similarly derail planning applications and can come in suddenly from left field. Other statutory undertakings such as transport are, generally speaking, a real problem for the members. Some aspects of the Penfold review looked at the other statutory undertakings that have a handle on determining planning applications and considered how that part of the process could be accelerated. We think that that is a hugely profitable area for CLG to look at—not just CLG, of course; they have to do this with the Department for Transport. If you could deal with some of the problems there, that would be hugely helpful. Frankly, I think you are on a hiding to nothing to construct a list of performing and non-performing authorities. It is too complex and you will drive the wrong behaviours.

Q119 Dr Thérèse Coffey (Suffolk Coastal) (Con): Ms Peace, would you clarify why a judicial review was granted? It is usually on the grounds of process. I am a bit confused, because you say they are doing all the right things.

Liz Peace: I suspect you may be a lawyer, and I am not.

Dr Coffey: I'm not.

Liz Peace: It seems to me that for judicial review, if you are determined, an opponent can usually find some aspect of an incredibly complex process that has not been followed correctly. This is a subject matter that we as an organisation have been looking at in conjunction with officers at CLG. We have said how can we try to at least deal with judicial review more quickly. You cannot constrain a process that is about individual rights. I am pretty sure you could always find some part of the process that was not followed to the absolute letter. That is what I was told in this case.

Q120 Dr Coffey: I am just interested in why you brought that up as an example when, frankly, the Bill does not necessarily change any of that. That is why I am a bit confused.

Liz Peace: The point I was trying to make was that all manner of things can come from all over the place to derail what ought to be a relatively straightforward process, and they do.

The Chair: Nic Dakin has a quick question that he might want to get a quick answer to before time runs out.

Q121 Nic Dakin: You seem to be warning us about the risks of trying to find criteria to measure a failing planning authority. The more I listen, the more you seem to be saying that numerical targets are very risky. Perhaps the criteria should be based on standards, which are a bit more complex. If you are going to have criteria, they should be on standards of behaviour, of ethos, of attitude.

Liz Peace: The first way to judge a local authority is on whether they have produced a plan that has been through the due process and been passed. As of the time we were arguing the NPPF, something like 50% of local authorities had not. If we want to start with targets of any sort, that would be the best place to start.

The Chair: If no one has further questions, we will move on to the next panel of witnesses. Time is up anyway. On behalf of the Committee, I thank the three witnesses. We will now hear oral evidence from the Chartered Institute of Housing, the Home Builders Federation, and the National Housing Federation.

Examination of Witnesses

Gavin Smart, Andrew Whitaker and David Orr gave evidence.

3.1 pm

Q122 The Chair: Before we start the session, would the three witnesses like to introduce themselves?

Andrew Whitaker: Hello, I am Andrew Whitaker. I am the planning director at the Home Builders Federation. Our members account for 80% of all houses built in the country in any one year.

David Orr: David Orr, chief executive of the National Housing Federation.

Gavin Smart: Gavin Smart, director of policy and practice at the Chartered Institute of Housing.

The Chair: Thank you very much.

Q123 Roberta Blackman-Woods: Could the witnesses tell us whether they think planning is an obstacle to growth? Do they agree that it is helpful to have some local authorities designated as failing in order to put another system in place to hurry things up a bit?

Gavin Smart: Planning can be an obstacle to growth, but it is not the only one. It is important not to focus on planning to the exclusion of everything else. I was listening to the previous panel talking to you about the difficulty of constructing lists. They are right, because it is hard to be clear about exactly what constitutes poor performance. I am not saying that one should not try to bear down on performance, but there is a risk of picking a single particular measure—for example, speed—and saying, "This constitutes poor performance." Fast decisions are good, but you also want good decisions.

David Orr: I broadly agree. Planning can be a constraint and it often takes longer than it ought to, but it is not the primary constraint on growth. I think that it is more to do with investment and economics than planning. Like colleagues in the previous session and Gavin, I think there is a danger in separating the world into the good guys and the bad guys. When you do that, you end up getting lost in definitions—who constitutes the good guys and who constitutes the bad guys—rather than worrying about what is actually happening.

Andrew Whitaker: We are broadly in agreement with that. We should do everything we can to make sure planning is not an obstacle to growth. I agree with Mr Orr that there are lots of other things that represent obstacles. We need to make sure that planning is not one of them.

Q124 Roberta Blackman-Woods: Is clause 1 in particular going to speed up decision making on planning? Once we have a number of authorities designated as failing—I will come back to ask you about criteria—and people who are developing major applications can go straight to the Planning Inspectorate, will that speed things up or not? How many people do you think will use that route?

Andrew Whitaker: I think you have heard a number of people suggest that this is part of a package, and that is what we would suggest to you. We have seen a lot of change in the planning regime in terms of putting the emphasis on localism. What we have said about localism is that we have no problem with it, as long as everybody embraces the idea of localism and localism not being a barrier to growth and, therefore, planning not being a barrier to growth.

Therefore, with this power under localism comes the responsibility of doing the right thing. Clause 1 is an essential part of these sticks to the carrots of localism. You can take that power on yourself as a local planning authority, but you have to make sure that you are doing the job properly and you are doing a good job. If you are not, people need to recognise that you are not doing the job properly and you are not fit to do that job, and an alternative regime is opened to you.

This is a voluntary regime. It does not change the entire planning process, as some people have suggested. It allows people who are bringing forward projects the alternative of going direct to the Secretary of State. Whether they use it or not is difficult to judge, because we do not expect a lot if local authorities are to be deemed to meet the criteria, whatever that criteria are. You should be pleased that that is going to be the case because we would not wish to see lots of local planning authorities across the country doing the wrong thing, and therefore being placed on special measures for want of a better word.

So (a), we would not expect a lot of authorities to be in that position, but (b), the development industry has an alternative. In fact, we believe that one of the outcomes of this piece of legislation—someone mentioned the word "deterrent"—is in its power of saying to local authorities, "Look, you need to do the right things and you need to make sure that you are efficient, effective and not a barrier to growth or we will implement this alternative mechanism for decision making in your areas. Therefore, you will lose the power that you have fought for under localism because you have abused that power because you have not lived up to the responsibility." It is a very powerful clause and we are very supportive of it.

David Orr: To be honest, this is not a measure that we in the National Housing Federation have sought and it is not a measure that we have a particularly strong view about it. The issue here is about the culture of planning and local leadership. If there were a clear, coherent local plan and a sense that the job of planning is to help to deliver that local plan, you create a much better environment for the conversations about development and growth to happen. Is this is a good mechanism to ensure that that happens—a kind of stick rather than carrot approach? I am anxious that we will get into arguments about who should be in special measures and who should not, rather than focusing on the job in hand, which is getting the planning consents and getting the building done.

Gavin Smart: I adopt a similar position to David. It is not a measure that the Chartered Institute is particularly focused on, but the important point is who ends up in special measures, which takes us back to the question of how you define failure. That would be my key concern. Can we satisfactorily identify who is failing and for whom is the principle of localism removed?

Q125 Roberta Blackman-Woods: Mr Whitaker, you were suggesting that you think the stick is helpful, and the stick is the list of designated authorities. How are we to judge which authority should be on that list?

Andrew Whitaker: The deterrent is not the list of authorities per se; it is the idea that you, as an authority, could be put on that list. That is the powerful deterrent because, as a local member, you will not want to have to answer to your electorate about why you have been put on this naughty step, for want of a better word, and therefore you are absolutely right that the criteria or the metrics that you will use to determine that have to be the right metrics. I have heard your earlier debate, and I agree with previous speakers. We are in a development plan-led system. The question, "Do you have an up-to-date development plan?" should be part of that metric.

Obviously, I am very concerned with housing and housing delivery, so I would like to put in a bid for having an up to date and deliverable five-year housing land supply on the list, but the important thing would be then to make sure that the metrics were not such a blunt tool that because you met one or two criteria you were automatically put into special measures. I would

perhaps like to see some form of audit—Ofplan or something or other—which says, "You've met criteria that suggest that there's a problem. Now you've got the chance to explain why there is not a problem." That would be fair.

I am also toying with the idea of having some sort of customer satisfaction measure in there as well, because if you went to my membership, as we do all the time, and asked, "Which are the poorly performing authorities in this area?", they would have a few names for you. You would then be able to ask, "What it is about those local authorities that are poorly performing and why are they poorly performing?" I am quite attracted to the idea of a user element input.

David Orr: If I may add one comment about this, we support the logic of the NPPF that in the absence of a functional plan, there is a presumption in favour of sustainable development. It seems to me that if that is there, a decent protection already exists. It is too early to say whether the intent of the NPPF will be, or is being, delivered in reality, but that is clearly the intent behind the NPPF.

Q126 Henry Smith (Crawley) (Con): Clause 4 of this proposed legislation discusses restricting the amount of information that planning authorities can demand an applicant to produce. What effect do you think that will have from your perspectives?

Gavin Smart: If you reduce a burden on applicants, that is welcome, provided you have sufficient information to make a proper decision. That sounds like a statement of the obvious, but you need to make sure that you have the things that you really need in there and you need to remove the extraneous information.

David Orr: It seems a reasonable measure in the description. Many committees get completely bombarded by vast amounts of information that do not help to determine whether the planning application is consistent with the plan. That seems to me to be the test: is it consistent with the plan and does it aid the committee to come to a decision? Once again, putting in definitions and having someone externally deciding what is and is not acceptable might create debate about the wrong thing. The debate might end up being, "Have we got the right information?", rather than, "Have we got the planning consent?" I understand the thinking behind the clause and, generally, if it reduces the bureaucracy and makes it easier to come to a clear and coherent decision, we would welcome it.

Gavin Smart: The other thing that would help is consistency. It is not only about a reduction in the burden; it is about an increase in consistency. If you know what you will be asked for and that is more consistent, it will help quite a lot.

Andrew Whitaker: It would be nice to think that such a clause was never necessary in legislation and that local authorities would only ever ask for things that were reasonable, relevant and material to their decision making. Unfortunately, our experience shows that is not the case and that a lot of local authorities take a belt and braces approach to information requirements with planning applications. It is true that most planning applications run to hundreds and hundreds of pages and are delivered in vans. Everyone jokes about it, but it is no joke. It costs a lot of money to make a planning application and therefore the clause is important. We need to address the issue. Primary legislation may seem a little over the top, but previous efforts to try to control the run on information requirements have not succeeded.

Q127 Henry Smith: Do your members raise as a complaint or a concern the cost of having to gather additional information when submitting plans to local authorities? Earlier, we heard an anecdotal example about flood assessments needing to be done for an application on the top of a hill. Is that something your members come to you about?

Andrew Whitaker: It is frequently frustrating to our members to have to provide information that people do not believe is necessary to determine their application—spurious information. Generally, this is shown when people get a planning consent with a planning condition to submit evidence of things that they were asked to submit as part of the planning application. Quite clearly the local planning authority has not used that information to determine the application; they have merely looked at the principle of development, and then said, "Well, what about the actual conditions?" and, "Oh, we need further information on that." But it was part of the original application. That is very frustrating, particularly if it imposes a repetitive cost.

For example, wildlife surveys can only be done at particular times of the year. That can delay a project by many months, as you have to wait for the next period to come around. Even though you submitted a wildlife survey with your planning application, because you have a condition on your planning consent requiring further information, you cannot submit last year's survey, you have to do a new, up to date one. That is very frustrating. It is very wasteful of money and time and it causes delay.

David Orr: I was speaking to the chief executive of a very large housing association earlier today. He was saying that they never now put in a planning application that is not contested. The idea that the plan should create an environment where some planning applications are clearly consistent with the plan and should be approved quickly and relatively straightforwardly does not happen. It really just does not happen very often. It is when vexatious applications come in, such as post hoc applications for town or village green status, which I suspect we may discuss later. That kind of thing is really designed just to be a delaying or spoiling tactic; it is not about providing additional good-quality information. I think it is possibly that more than anything else that people find frustrating—the fact that absolutely everything is contested, regardless of whether it is consistent with a properly formulated and fully agreed local plan.

Gavin Smart: I would not disagree with that, and yes, you will always find members who are concerned that the burden of information is greater than it needs to be. The trick is to be clear about what spurious information actually is, because although it does not always appear to be necessary from the perspective of the person seeking the permission, there may be other reasons why it is required. An honest conversation about what information is really pertinent to deciding whether a development is consistent with the local plan is a good way forward.

Q128 Ian Murray: May I take the panel to clause 5 and ask first what you think will be the consequences for affordable housing of proposed changes to the conditions on section 106?

David Orr: This is an interesting clause, because it is implicit in it that the affordable housing element of the planning obligation is primarily responsible for consented sites not being built out. That is an assertion that we have heard consistently, but we have seen little real hard and fast evidence to demonstrate it. It is clearly the case that for some consents offered in slightly different economic times it might now be difficult to deliver the whole of the conditions, but the idea that it is just the affordable housing element that should be under scrutiny seems to us to be completely wrong. If we are to have a re-evaluation of the whole planning application process and whether the planning conditions are necessary or affordable, we need to be looking at all the planning conditions as a complete package and assessing the process not purely on the financial requirements, but on the planning requirements in respect of the application.

If section 106 were to disappear altogether, our assessment was that in the existing affordable rent programme, for which the Government have provided some capital support, a maximum of 35,000 homes would be put at risk. It is unlikely that the clause as worded, if it were to be implemented, would lead to a reduction of that size, nevertheless that is the total population of homes at risk. We are in an environment where about half of all new affordable housing supply, even through the worst of the economic downturn, has been delivered as a result of section 106 considerations. If we still have a public planning and policy objective of mixed income, mixed tenure communities, undermining section 106 is potentially problematic.

I want to make one other point. Certainly from a housing association point of view, the most important thing that section 106 does is to deliver land. People often think of it as a subsidy, but it guarantees the availability of land to build new homes. Commuted sums off-site do not necessarily bring that same guarantee, and land access is a real and significant problem. There may be occasions when it is legitimate to reassess the overall planning obligation, but to limit it purely to the affordable housing element seems to us to be wrong in principle and unfounded in evidence.

Gavin Smart: I would agree with a lot of what David said. This is the part of the Bill that causes us the most serious concern. There is an assumption that the affordable housing element of section 106 is the major impediment to development, but I am not sure that is properly evidenced. I think we would all agree that development finance, mortgage finance and the wider economic context are at least as important. Like the National Housing Federation, and certainly like the Housing Policy Forum, we want to see the maximum new supply across all tenures. However, I am concerned that the measures in the Bill will simply reduce the affordable housing provision, and not lead to any net increase in the supply of homes, which we all need to be concentrating on.

David is absolutely right when he says that section 106's key function is as much about access to sites and what that delivers in terms of mixed communities, as it is about a financial subsidy, but it has also been responsible for significant numbers of new homes. The Homes and Communities Agency's figures for 2010-11 show that 29,000 homes were delivered through the section 106 route. It is an extremely important delivery route, and we are concerned about putting it under threat.

Andrew Whitaker: This measure is not about delivery of affordable housing. It is about being able to examine the viability of development. By far and away the largest element of cost to a residential development is the cross-subsidy of affordable housing. Everyone uses the shorthand of section 106; I think they are wrong to do so, as it is merely a mechanism by which we deliver planning obligations. Planning obligations delivered via section 106 need to follow the tests for planning obligations. They need to be necessary and related in scale and kind to the development, as is set out in the community infrastructure levy regulations. Those are high hurdles to jump. You can only ask for a planning obligation for that which is necessary to mitigate the impact of your development.

All this is changing under community infrastructure levy. The one thing that is not changing is cross-subsidy of affordable housing. That is outside community infrastructure levy and it is also unique in the fact that it is not specifically about mitigation of impact. We do not generate a need for affordable housing by building houses; in fact, it is probably the opposite of that. It is this element that is policy-driven and therefore open to negotiation. This is a negotiated benefit of development. Therefore, the clause allows developers to go back and renegotiate that benefit based on the viability of their development in the current economic times. Mr Smart is absolutely right to draw attention to all the other impacts on the viability of development, because they are all very important. However, we need to be able to reassess viability at the time of the implementation of the consent, because that is when you make the decision to go forward or not. As someone once said—I think it was even a Secretary of State—50% of nothing is nothing. If we are talking about delivery, delivering development with an element of affordable housing is better than not delivering any housing with any cross-subsidy for affordable housing. I think we are focusing on the wrong thing. We should not be focusing on how much affordable housing you are losing; it is how much affordable housing you are actually getting by enabling developments to go forward in a viable way.

Q129 Ian Murray: Can I unpack that a little more? Why do you think the Bill concentrates on the element of section 106 on affordable housing and not, as I think Mr Smart alluded to, the whole of section 106? Why is it concentrating only on affordable housing?

Andrew Whitaker: The whole planning obligations package should be related to the development, and they should be necessary to enable the development to go ahead. In effect you are saying, "Actually, we negotiated for benefits that were not necessary for the development to go ahead. They were just nice things to have." That is an abuse of the planning obligations legislation and the CIL regulations, which limit what you are actually allowed to require as planning obligations. If we say, "We should go back and renegotiate all those things, because we actually asked for a whole load of packages of goodies that we shouldn't have been asking for", I am all in favour of doing that, because I know that it happens, but it is almost an admission that that has happened, whereas affordable housing sits outside the mitigation regime, and therefore it is the only thing left to make development viable.

David Orr: Yes. The truth is that the planning obligation arises as a result of the increase in the value of land that comes along with a planning consent for residential development. The job of the planning authority is to determine what is consistent with planning policy and consistent with the local plan and how best to deliver it. I accept that there will be some occasions when a planning consent has been given with a connected series of obligations, and that series of obligations is unaffordable in the current economic environment. To have the opportunity to reassess that seems to us to be a reasonable thing, but the whole package of obligations should be explored, not purely the affordable housing element.

On the separation that says affordable housing is only policy, I would say the separation is that the affordable housing element is policy—it is an integral part of planning policy in almost every local authority in the country, and it is not at all unreasonable that local planning authorities should seek to deliver affordable housing through that planning regime.

Q130 Ian Murray: Are you saying that if you take out that major obligation from a section 106 agreement the consequences, particularly in the current economic climate, could be that it pushes land values up?

David Orr: Why would it not do that? What is the mitigant that absolutely guarantees that it will not have an adverse impact on land? There are all kinds of things that stop consented sites being built out. The most obvious is that developers are not absolutely confident that the product they build can be sold, not because of lack of demand, but because of a perceived lack of mortgage finance and the inability of banks and other lenders to provide that mortgage finance.

The planning obligations are part of the overall package. I absolutely agree with Andrew's view: I would rather have 30% of something than 40% of nothing. It is proper that where there is evidence that it is genuinely unaffordable, the whole thing should be re-examined, but the point is that it is the whole thing should be re-examined, not merely the affordable housing component.

Q131 Ian Murray: This is all predicated on economic viability. If removing affordable housing from a particular development can make it more economically viable, the consequence could be to make the land value higher to make it more economically unviable either for that particular site or for other sites in the locality. Is that essentially what you are saying?

David Orr: In theory, that is possible, but my wider concern is that it will reduce the delivery of affordable housing. The economy needs affordable housing as well as market housing.

Gavin Smart: I agree. You might also ask a question about how that increase in land value would be expressed if it were simply expressed in increased property prices. That is not helpful either.

I suppose one of the unsung benefits of section 106 is that, to a degree, it gives developers certainty because it is the proportion of the site that you know you will be able to sell to somebody. It is not all a downside. The Local Government Association figures show that 80% of local authorities are already voluntarily entering into negotiations to revisit section 106, for exactly the reasons that David set out. We all know that agreements were entered into at the top of the market that are not viable now. My other concern is that there are already mechanisms that can be used to enter into these kind of discussions.

David Orr: This is a relatively small problem that does not require a solution of this scale and impact. It does not require new primary legislation to enable it to happen. I would put it even stronger than Gavin's comments. There are a number of occasions when new sites are started because of a section 106 obligation because there is a guaranteed purchaser for that product.

The Chair: Can I say to the Committee and the witnesses that we are now over halfway through the session. Three Members have asked questions, and there are at least four who want to ask questions, so if we are to get through everybody who wants to ask a question, and there may well be more, we may need snappier questions and snappier answers.

Q132 ***The Parliamentary Under-Secretary of State for Communities and Local Government (Nick Boles):*** I have two quick questions to direct towards Mr Orr. Do you have any reason to believe that the Planning Inspectorate, in assessing the viability of the site and therefore what proportion of an affordable housing commitment would need to be reduced in order to make the site viable, is somehow going to be less fair or less reflecting of true economic circumstances than one of the many local authorities that actively negotiates? That will be welcome, and what we are trying to do is to replicate it.

David Orr: I have no concern about the arbiter being the Planning Inspectorate. If we get to the point where arbitration is needed, the Planning Inspectorate is as sensible and rational a place to go as anywhere. It partly depends on the question that you are asking the Planning Inspectorate. If the question you are asking is, "How much can you reduce the affordable housing obligation?", you will get one answer. If you are asking them how can you recast the entire obligation, you may well get a different answer. That seems to be the most critical thing.

Q133 ***Nick Boles:*** One other question, if I may. On 6 September, when we announced this proposal, we also announced a further £300 million in subsidy for affordable housing. You said that if all affordable housing commitments in 106 agreements were cancelled completely, it would, in theory, lead to a loss of 30,000 or possibly 35,000 homes. You yourself said you did not think that that was going to happen, and I assure you now that it will not happen because the Planning Inspectorate would never agree to it. If you then add the further affordable houses that will be built as a result of the further £300 million of subsidy that is being provided by the Government in the same announcement, is that not more likely to produce a net increase in the level of affordable housing?

David Orr: The 35,000 homes are and were the total number of homes in the present affordable rent programme that were dependent on delivery through section 106. If the entire obligation had gone, that was the total population of homes at risk. The Government's announcement on 6 September did not—as some had suggested it might—say "We will get rid of the obligation for three years", but instead, "We will create a mechanism by which this can be re-examined." At that point, the 35,000 became a redundant figure because they were not going to get rid

of the whole section 106 obligation. That was very welcome, and I was glad that some of the conversations we had with officials and others had, I felt, been listened to. That was very welcome.

As for the £300 million, I am always thrilled when the Government see fit to provide additional capital investment in the supply of new affordable homes. Indeed, the proposal about a guarantee scheme also creates the potential to build new homes. My ambition is to see that those figures—those initiatives—will create more new homes, rather than only replacing ones that we would have been able to build anyway. In an environment where the economy is managing to churn out 110,000 new homes but to create 390,000 new households, surely the ambition has to be the greatest possible volume of new supply.

Nick Boles: On that we can agree.

David Orr: Indeed.

Q134 Mr Raynsford: May I ask Andrew a question? You said that your support for clause 5 was because it would allow developers to go back and renegotiate. What is stopping them doing so at the moment?

Andrew Whitaker: Absolutely nothing. Where local authorities are taking a pragmatic approach, that is exactly what we are doing. Do not forget that in order to get development, you need a willing developer, and in order for a developer to be a willing developer of a particular development, the development has to be viable in the developer's mind, not in an arbitrary assessment of the viability of that particular development. If the developer does not believe that the development is viable, it will not go forward. Therefore, it is important to recognise that just saying that something will happen does not make it so. Where local authorities recognise that viability is an issue, and where agreements were agreed some time ago in a different economic climate, or with a different funding regime or a different funding package, those agreements ought to be open to renegotiation, and we ought to be able to renegotiate them quickly, efficiently and effectively.

Q135 Mr Raynsford: Are you familiar with my constituency of Greenwich and Woolwich?

Andrew Whitaker: I am.

Q136 Mr Raynsford: You know that it contains a quite large number of regeneration development sites, such as Woolwich Arsenal, Greenwich Peninsula, Heart of East Greenwich, Lovell's Wharf—I could go on naming them. Can you name a single one where the stall that occurred during the recession has continued because of reluctance to reach agreement on a modified section 106?

Andrew Whitaker: I am afraid that I do not know the individual sites well enough to know whether that would be the case.

Q137 Mr Raynsford: There are none. Can you understand the concern of some of us who have spent a lot of time working to ensure mixed tenure developments, where you get people of different incomes living side by side, that the effect of this particular clause could well be to create a rush of mono-tenure developments without any affordable housing?

Andrew Whitaker: We are not against the provision of affordable housing in pursuit of mixed and balanced developments. This is solely a clause about the viability of development and the availability of grant funding; either the money is not coming in from that affordable housing element, or the economics of the development of the site have changed for other reasons, and therefore the site is not coming forward for development. While they are not in your constituency, I can take you to a number of sites that are not coming forward because of development viability, and the largest part of that viability calculation is the amount of money that needs to be made to cross-subsidise affordable housing.

Q138 Mr Raynsford: You were not here this morning, but we heard from representatives of local government, who were expressing concern that already, in anticipation of this clause, some developers were taking a view that they would be able to appeal and get rid of obligations to produce affordable housing. Can you see that potential problem as a result?

Andrew Whitaker: That is not what the clause suggests. The clause suggests that you will have to show evidence of the impact on the viability of your site and that that site will not come forward. If your site remains viable, the inspectorate will say, "No, your site is still viable; you can still bring that site forward. I am not going to change this agreement." I think that is perfectly right. I do not think that it will be open to everyone to lodge an appeal on the basis of viability and to say, "Actually, my site is viable, but I'd rather like to make some more profit, please." I do not think that that is what the clause is trying to do.

Q139 Mr Raynsford: But you understand that the representatives of local government who were here this morning felt that it was actually having a negative effect on development, because it was deterring schemes that might otherwise proceed.

Andrew Whitaker: I think what is having a negative effect on development is a lot of local authorities who are not renegotiating section 106 contributions and planning obligations, and are sticking to their guns, thus making a lot of development unviable.

Mr Raynsford: Can I ask David Orr for his view?

David Orr: Yes; I think that whatever the outcome of this, whether it produces more or less homes in the long run, in the short run there will be delay, because it creates another mechanism for reassessment. I am anxious about creating sledgehammer legislation to crack a present-day nut. I think we are in danger of doing that. There are mechanisms by which these obligations can be renegotiated.

Nevertheless, I accept that if we can create a mechanism that allows that to happen quickly and easily, and the Planning Inspectorate does not get swamped, and is able to make assessments quickly and easily and, as a result, impose a new obligation on the developer, that says, "We've changed the obligation; now you must accept an obligation to get building—you can't just go back and sit on it for another three years," the potential is that the outcome might be more new homes being built slightly more quickly than would otherwise have been the case.

I say again that the only way that is going to work is if the entire obligation is looked at, rather than just the affordable housing part.

Q140 Andrew Stunell: Fifty per cent of nothing is nothing, and there is a very difficult balance to be struck. I would be interested in the panel's views about this. Other things being equal, clearly it is better for the developer to pay for affordable housing than the taxpayer, therefore section 106 has a lot of value. We have 400,000 permissions that have not taken place. What confidence would Mr Whitaker have that if the agreements could be renegotiated it would mean that we would get more houses built, rather than an addition to the stock of 400,000 that are not being built?

Andrew Whitaker: First, let me address your issue of 400,000 outstanding planning consents. I have no reason to doubt that figure. In fact, it seems very low, because if we require a five-year housing land supply and we want to build 200,000 houses a year, one would suspect that in the pipeline 1 million houses might come forward; so 400,000 seems to be less than two years' housing provision.

However, even that is misrepresenting the situation, because all those 400,000 permissions are on particular sites, and all those sites have particular issues associated with them. If I grant you a consent for 2,000 houses, you are not going to go out and build them tomorrow. There will be a trajectory over time of how they will come forward on a development. For all sorts of reasons, even in the best possible market, those houses would not all turn up overnight. They would come on line over a 10, 15 or even 20-year development process. To round them all up and say "We've got 400,000; why don't you go out and build them tomorrow?" is the wrong approach to that figure.

Then we come to look at each of the individual sites and their trajectory, and saying which of those sites are the ones that are "underwater"—the technical term that the industry uses. It does not mean they are subject to flooding; it means they are unviable. It is up to the local authority to go out and talk to the developer and say, "We gave you permission a year ago, and you don't seem to be on site yet. What's the problem with your site?"

If the developer says, "Oh, well, the funding for the affordable housing that was going to kick-start this development—we've lost it," the local authority can do something about it. It can find funding from alternative sources. It can renegotiate the section 106 to phase the affordable housing later. It can change the conditions on the planning permission. It can do all sorts of positive things, to make sure that that development comes forward. There are local authorities that sit on their hands and say, "There is nothing we can do," and moan that there are 400,000 planning consents out there: "Why don't these nasty developers do anything?" What they need to do is work with the developer to ensure that those sites are brought forward and to try to find practical solutions.

That does not mean giving up all the planning obligations. Sometimes it merely means rephasing those obligations. A lot of obligations are put on as what we call pre-commencement conditions—things that need to happen before you are allowed even to build the first house. That has a very negative impact on cash flow for the developer. It means that the developer cannot take that risk, because they do not have the cash flow—the cash up front—because of problems, as Mr Smart says, with borrowing a lot of money up front on projected sales rate. All those things can help a developer make a site more viable. My suggestion to all the people who are telling you that there are 400,000 permissions out there is to go out and talk to their developers on a site-by-site basis so that they can come up with tailor-made solutions for each of those sites. I believe that will bear fruit.

Q141 Andrew Stunell: Do you feel that clause 1 will accelerate that process?

Andrew Whitaker: I do, because it says to developers, "If you encounter a local authority that does not want to listen to your story and does not want to discuss the specific issues of your site, particularly relating to the affordable housing provision element, which is very expensive and frequently an up-front requirement of cost, here is an alternative route for you to take." Where the local authority does not want to listen, it gives the developer an alternative route. Where the local authority believes that the developer will take that alternative route, it will become keener to talk to the developer.

Q142 Andrew Stunell: Your assumption is about who the buyer and seller is. Is it in fact the case that developers are very eager to develop but are frustrated, or are they rather relaxed, because they do not have a stream of finance to support the development in the first place?

Andrew Whitaker: Developers and house builders, as their names suggest, develop and build houses. That is their core business, not land speculation. We make money out of building and selling houses, and that is what we are keen to do. We do not get planning consents just for the fun of it; they are very expensive, very time-consuming and a lot of hard work. When we get a planning permission, we are very keen to implement it, so we are very frustrated by a number of the barriers that we are facing.

Q143 Andrew Stunell: I take the point about its not being about land values, but what would your view be on this being a temporary requirement predicated on changing land values? Would your view be that we should make a step down to reflect the poor market conditions and a step up when the market conditions get better, or do you want to cash the benefit?

Andrew Whitaker: In truth, the clause is of its time. There are many other ways that you might do it, but this is the proposal in front of us and it is effective and will bear the fruit that we want. Whether it will be time limited is to be decided. Being able to appeal elements of a section 106 agreement, particularly on affordable housing, is the right thing at any time. After all, if you have a condition on your planning consent, you are allowed to have it reassessed and to take that to the Secretary of State for consideration at any time after you have received that planning permission. The fact that section 106 is merely a legal agreement and therefore subject to different rules is an anomaly in the system that we should be sorting out.

Q144 Bob Blackman: What evidence have you got that section 106 agreements, apart from the affordable housing requirements, are actually leading to housing developments being stalled?

Andrew Whitaker: We have done substantial work over the past two or three years providing that evidence to members of the Government and members of the Department, with real-life examples of development sites that are, as we term them, underwater—unviable.

Q145 Bob Blackman: How many units of housing at this moment in time are held up, other than because of affordable housing commitments?

Andrew Whitaker: I cannot put a figure on that. I do not have that evidence and I would not want to mislead you.

Q146 Bob Blackman: Do you have a broad idea of how many?

Andrew Whitaker: About half of the 400,000 is my ballpark guess.

Q147 Bob Blackman: What about section 106 obligations, which are clearly to do with transport, education and a whole variety of other things, that have not been spent by local authorities within the time frame that they should have been spent and your members have just said, "Forget about them"? How much money is knocking around on that side?

Andrew Whitaker: I have not done the research to understand that. I believe that some local authorities have undertaken that research, so someone else might be able to give you that answer. I am afraid I cannot.

Q148 Bob Blackman: But you are not aware of any.

Andrew Whitaker: I know that there is a figure. I am not aware of that figure, I am afraid.

Bob Blackman: Mr Orr?

David Orr: We do not collect that information. We hear about commuted sums in respect of affordable housing, and that the systems for ensuring that those commuted sums are spent for the purpose for which the sum was commuted are not robust. There is a case to be made for exploring that in more detail, but we do not have the mechanism to collect such detailed information.

Q149 Bob Blackman: Do you have any evidence of stalled schemes on the basis of additional section 106 obligations?

David Orr: No. We do not have that evidence. One of the difficulties about this whole conversation is that hard evidence rather than assertion or anecdote is pretty light.

Gavin Smart: Similarly, we do not have that evidence. As David says, part of the problem with this whole discussion is that it is actually hard to find the hard evidence that says, "This is the scale of the problem and this is why you need to address it." You can hear quite a lot of assertion, but you will also hear other developers say, "Actually, section 106 is not the major problem for us at the moment. It is development finance, mortgage finance, the overall market conditions."

Q150 Bob Blackman: Do you think the lack of willingness to negotiate on section 106 agreements should be considered as part of an underperforming planning authority?

Gavin Smart: It could be an indicator, but I think I said earlier that the Local Government Association suggests that 80% of local authorities are currently involved in proactively negotiating section 106s where they accept that they need to be adjusted. How much of a problem that actually is, I am not sure. It also strikes me that one could think about whether the clause needs to change to allow local authorities to say to a developer, "Come on, let's get back to the table and work this out." You would want a practical local authority to be able to say to a developer, "Let's try and sort this out."

David Orr: It would be ironic if it got as far as the Planning Inspectorate and it said, "You can manage a bit more affordable housing here." Economic circumstances are going to change, are they not? It seems to me that the description that Andrew gave a short while ago of an ideal scenario in which the local planning authority is working with developers of whatever kind to try to achieve the ambition of getting the stuff built is the ideal outcome. That is absolutely the ideal outcome. Most of the mechanisms are in place to allow that to happen. If that completely stalls because of the intransigence of the local planning authority, the idea of there being the potential for an appeal to the Planning Inspectorate is a sensible proposition provided it is the whole package.

Andrew Whitaker: Your idea is an interesting one, but I think it is tied up in a much wider delivery issue, so one would like to measure whether the authority is delivering against its development plan, and whether it is meeting its housing requirement. How it does that might be through the renegotiating of section 106.

Q151 Bob Blackman: May I ask one—

The Chair: We have six minutes left with these witnesses. I have at least two, possibly three other Members who want to ask questions. I am hoping that we may be able to squeeze in one quick question from each, but it will require brief answers.

Q152 Mr Raynsford: This is a technical question on David Orr's point about what would happen if the Planning Inspectorate decided that more affordable housing might be justified. The Bill as drafted does not allow that. It says you cannot modify the obligation to make it more onerous. I have a concern about this, because I can see circumstances where, as part of a renegotiation, there would be an agreement to change the phasing. Different discounted cash flows would suggest that that might be more or less onerous, and there might not be clarity about something that everybody could agree: a rephasing of the obligation to make it more viable falling foul of this provision. Have you given any thought to that?

David Orr: No, but we will do so now.

Q153 James Morris: May I come back to clause 1? The question is largely prompted by Mr Whitaker's conjuring up this vision of Ofplan going round auditing local authorities. Just to get clarity, do we think it is possible to develop objective criteria to judge whether or not a planning department is failing?

Andrew Whitaker: Yes.

David Orr: Honestly, I think it would be very difficult to demonstrate what is cause and what is effect.

Q154 James Morris: Mr Whitaker, what would be those criteria? If there were two top criteria, what would they be?

Andrew Whitaker: Were you delivering against your development plan, and were you doing it in a timely fashion? I think you have to have timeliness in there, but it is outcomes that we want to measure. We want local authorities to deliver what they say they are going to deliver, when they are going to deliver it.

Gavin Smart: Andrew has just demonstrated the difficulty of unravelling cause and effect. I think it is possible to do it, but it is hard.

Q155 Roberta Blackman-Woods: Mr Whitaker, I am terribly taken by your description of developers really desperate to develop, but being held back by 106 agreements. If the 106 agreements are renegotiated directly with the inspector, would you think it reasonable that a condition is then applied, so that the housing development has to come forward within a reasonable period, say two years of that decision?

Andrew Whitaker: I would say yes, that is reasonable. However, please be aware that planning permission is a licence to develop; it is not an obligation to develop.

Q156 Roberta Blackman-Woods: That is why I am suggesting that a specific condition be applied that would require it to come forward more quickly.

Andrew Whitaker: If you allowed that to happen, I do not think you would get many applications. You would get some, and some developers would say, "Yes, we can commit to that delivery regime," but as you have heard from so many people, there are lots of things that happen along the way. Therefore to say, "I will commit to building this number of houses in this time period," would, I think, cause some concern in the industry.

Q157 Roberta Blackman-Woods: But would you accept that if the renegotiation is taking place because of unviability in a certain set of economic circumstances, and that the development does not come forward within that same set of economic circumstances, it was simply not reasonable to go through the test of viability in the first place?

Andrew Whitaker: I accept that. I think you are correct. It is how you go about doing it that causes problems. If I am getting you correctly, the idea would not be that you would merely put a one-year time limit on implementing that consent, but that you would try to seek control output on that site as well. I think that would cause the industry considerable concern. Not the first one. I think putting a short time limit on it and saying, "You either implement this consent within the next year or you have come back and renegotiate again," is perfectly acceptable.

Roberta Blackman-Woods: That is helpful. Thank you.

The Chair: Would Bob Blackman like to get in for the last question? I cut him off in his prime earlier.

Q158 Bob Blackman: Yes you did. I will be quick. Obviously, the Bill is all about promoting growth and unlocking potential for development. Is there anything else that should be considered as part of the Bill that you, as representatives of the industry, would like to see included, but is not in it?

David Orr: My big plea is to go ahead absolutely as written here with the clause in relation to town and village greens. We have a recent example of a housing association that built 10 new homes, which were completed in March. All 10 of them were occupied in March and an application for village green status was launched in April. That is completely absurd. Vexatious claims like that, which are just designed to stop things happening, cause problems.

Bob Blackman: That is the one we heard about this morning, I think.

Q159 Dr Coffey: The Norfolk one?

David Orr: Hastoe Housing Association. There are a number of them. I can give you a whole list.

Dr Coffey: Write in.

Q160 Bob Blackman: Is there anything else you would like to say?

Andrew Whitaker: We have considerable concern about the number of conditions that are starting to be attached to planning consents. This falls within the scope of clause 4, that we discussed earlier—I'm sorry, was it 4 or 5?

Q161 Bob Blackman: Is that on information requirements?

Andrew Whitaker: That is on information requirements. We would like to expand that somewhat to address the problems we have with the ever-expanding list of conditions that local authorities put on planning consents when they have already considered those elements as part of the planning application.

Gavin Smart: I think my answer would be no, because going back to first principles in the introduction to the NPPF—

The Chair: Order. I am afraid that brings us to the end of the time allotted for the Committee to ask questions of these three witnesses. On behalf of the Committee, I thank you all for coming along. We will now hear evidence from the Royal Institute of British Architects and Shelter.

Examination of Witnesses

Ruth Reed and Toby Lloyd gave evidence.

4.1 pm

Q162 The Chair: Before we start our questioning, would the new witnesses like formally to introduce themselves to the Committee?

Ruth Reed: Good afternoon Minister, ladies and gentlemen. I am immediate past-president of the Royal Institute of British Architects, a practising architect and academic, and I am now chair of the RIBA's planning group.

Toby Lloyd: I am head of policy for Shelter, the housing and homelessness charity.

Q163 Roberta Blackman-Woods: Could you begin by telling us whether you are broadly in favour of the provisions in the Bill, and whether you think that designating some local planning authorities as failing is likely to produce more growth or not?

Toby Lloyd: Broadly, I do not think Shelter would want to get too heavily involved in a lot of the planning aspects of the Bill, particularly questions about centralism versus localism, because that is an enormous debate that will run and run. We would prefer to restrict our comments and involvement to the elements relating to affordable housing, particularly around clause 5.

Ruth Reed: The RIBA is concerned about the impact on the presumption that we will have local consultation in with planning, and that there will be community buy-in and acceptance of proposals. We are a strong supporter of the NPPF, as well as of the Localism Act 2011, on the basis that it sets out to engage communities. We are concerned that non-performance may be due to obstructiveness, but it could be due to lack of resources. In fact, if you look at the underperforming authorities in the evidence from the House of Commons Library you can see that some are clearly suffering from lack of resources, rather than from a desire to be obstructive because of rejection of development within their boundaries.

Q164 Roberta Blackman-Woods: As Mr Lloyd is not answering questions on this section, I will stick with you, Mrs Reed. Would you characterise clause 1 as an essentially anti-localism measure?

Ruth Reed: I have to be somewhat measured. There is concern that the provision would deny some people the opportunity to comment on an application through the democratic process. It is not clear in the Bill what the process would be for third-party representation to PINS when it was considering an application.

Q165 Roberta Blackman-Woods: We heard from the Minister this morning about the criteria for authorities to be designated as failing. Do you have any comments on the sort of criteria that should be taken into consideration for such designation, or do you think it is totally unhelpful?

Ruth Reed: In arriving at any metrics for underperformance, you should also take into account the reasons for lack of performance, so you might measure timeliness of making decisions on planning applications, and you might decide whether they were making decisions against their own local plan. There are ways that you might measure it, but you could not do that without looking at why the local authority felt that it needed to underperform in that way.

Q166 Ian Murray: That was quick. Mr Lloyd, with regard to section 106 agreements, what impact do you think clause 5 will have on the availability of affordable housing and homelessness?

Toby Lloyd: It is hard to be absolutely confident in predicting the future, inevitably, but it is worth saying that the mixed funding model for affordable housing that evolved over the last 20 or 30 years was effectively based on three pillars of funding. They were the grant subsidy system provided by what is now the Homes and Communities Agency; the borrowing capacity of housing associations based on their rental income and balance sheets; and the cross-subsidy through section 106 planning obligations. I would just ask the Committee to consider how all three of those pillars are now faring, given that the capital subsidy grant was reduced by 60% in the emergency budget, given that benefit and regulatory regime changes have at least put something of a question mark over housing associations' long-term ability to borrow in future, and, if we now start talking about undermining the ability of section 106 to provide cross-subsidy, given what that will do to the long-term ability of the affordable housing industry to supply affordable homes. There are real questions to be answered there.

Q167 Ian Murray: How would an organisation such as yours try to kick-start some of the affordable housing approvals we have heard about that are not being built? We are hearing anecdotal evidence that they are perhaps stalled where a re-negotiation may get them moving. You heard the previous panel say that that is perhaps not entirely accurate, but what would Shelter suggest to try to get some of them moving along in the current economic climate?

Toby Lloyd: As you have heard, there are already plenty of opportunities to re-negotiate what are, let us not forget, privately agreed contractual agreements. They are not imposed commitments, they are private agreements between a planning authority and a developer. As you have already heard, plenty of local authorities are re-opening section 106 obligations where that is deemed appropriate, so I would question whether it requires legal change from on high to achieve something.

If we are talking about trying to get things moving quickly, which, after all, is the purpose of a growth and stimulus Bill, I am afraid I am reminded of the fact that we were here about two years ago talking about similar provisions in the Localism Act that have so far yet to show any fruit on the ground. We have yet to see any increase in house building since that time, so I would question first whether legislation is the right approach at all in this case, and I would definitely question whether it is a mechanism for getting rapid change in behaviour on the ground, or whether really we should be looking elsewhere for measures to kick-start development, especially for the permissions that do exist.

Q168 Bob Blackman: Turning to the issues of 106 obligations and so on, I want to run a view past you that several people would impart, which is that one of the problems with 106 obligations is that they propose a percentage of the dwellings to be built, but there is often silence on the quality, the number of bedrooms and the mix—family housing and such like as opposed to smaller social and affordable housing. Is it the quantity that matters to your organisation, the quality, or the mix?

Toby Lloyd: It is absolutely both, and I completely reject the suggestion that there is an absolute trade-off between quantity and quality. In fact, I am afraid we have often seen that the consequence of ramming through low-quality development is that not only do you end up having to pay the cost of knocking it down before very long, you build up local resentment towards low-quality development, and ultimately you do not even get quantity in the long run because you put people off development. So no, I do not see that there is a trade-off at all; you need both quality and quantity, and, in fact, you cannot have quantity without quality.

Q169 Bob Blackman: Some developers might say, for example, that they can build better quality social or affordable housing if the percentage is reduced from, say, 50% affordable housing on the site to 30% or 25%,

or even 20%. Therefore you get better quality housing for sale and better quality affordable housing. Do you think that is fair?

Toby Lloyd: The reason section 106 agreements are on a case-by-case basis is precisely that every single application will vary, depending on the point of time and that particular site; so yes, I am sure there are absolutely cases like that out there, but whether it is appropriate for primary legislation to be imposing those sort of responses, from Parliament down to every local authority, I would definitely question. I think those are matters to be renegotiated on a case-by-case basis.

Q170 Bob Blackman: So the principle of absolute targets, of a percentage of affordable housing, is not what you would ask for?

Toby Lloyd: There is always a problem with targets: too crude a measure can have perverse consequences, and that is true in every field. Certainly, having just a percentage of units is not a particularly sophisticated target. All the best planning authorities do not just demand a percentage of units, because obviously that incentivises smaller units, and so forth. Equally, bedrooms are not a particularly good measure, because unfortunately that just means we produce smaller housing with larger numbers of smaller bedrooms. There is clearly an issue about the metrics to be used, but again, I do not think that is something that is best dealt with here.

Q171 Bob Blackman: So renegotiation of section 106 obligations that were imposed four or five years ago—and therefore sites are stalled. Renegotiation is not an issue for you.

Toby Lloyd: There are two separate questions here. One is about the metrics that are used and the nature of section 106 agreements. There are good ones and bad ones and a well-negotiated one is a well-negotiated one, regardless of whether we are talking about five years ago or today. Some of those issues will perennially be with us and it is up to both sides of a negotiation to make sure that they are good agreements that make sense and deliver what they are meant to deliver.

There is then a secondary question about whether agreements agreed voluntarily at a certain point are no longer deemed to be viable. That is a much more questionable metric, because it is not always entirely clear what constitutes viability. I would certainly demand that, at the least, transparency is required here, because there seems to be a suspicion that viability is in the eye of the developer and is not often open to serious scrutiny, at least not in a transparent or public manner. If there is an argument that something has changed along the way that means that the agreement negotiated and entered into five years ago is no longer viable, it is the duty of the developer to demonstrate that and also, as was raised in the previous session, to ensure that adequate public compensation is received for that renegotiation.

Q172 Bob Blackman: Ms Reed, you have severe reservations about these changes to 106 agreements. Could you articulate your organisation's view?

Ruth Reed: We are concerned about the impact that it will have on the provision of affordable homes and we are also concerned that the root causes to do with the issue of affordable homes and private tenure, which are to do with size and general quality of design, will not be addressed by this; it will merely allow a renegotiation of percentage numbers of housing in any development. It is not addressing the root causes, which we believe are to do with the finance of development and not necessarily to do with planning. As a crude measure, it does not give the local authority or the inspectorate, even, the opportunity to require quality of development of the type, size capacity and design that is necessary.

Q173 Bob Blackman: Would you like to see measures included, either within the final legislation or regulations, subsequently, to require standards of quality? Is that your evidence to us?

Ruth Reed: Outside this Bill there are moves to look at the standards to do with housing, which could be an effective tool in ensuring that we deliver good housing across the country that meets the requirements of the private, mixed and the lease sector. It is not something that can be driven through 106 agreements, but it could be linked to quality standards elsewhere.

Q174 Bob Blackman: One problem that has been presented elsewhere—to the CLG Select Committee, for example—is that planning applications and consents granted in the past were for particular sizes of dwellings, for example, for two-bedroom properties, and there is a bigger requirement for family housing of three or four-bedroom houses now. Do you think that is a reason for renegotiating these 106 agreements?

Ruth Reed: Section 106 is linked to the percentage usually of the affordable homes on the development. It does not go so far as to dictate the dwelling size and type of all the developments. It is not strong enough usually to be able to go in and renegotiate the entire design, because then you would not have the same approval. You would have to reapply for the basic planning approval that you have got.

Q175 Nic Dakin: Mr Lloyd, you used the phrase "best planning authorities" in answer to Mr Blackman's question, and Mrs Reed, you talked about the difficulties of looking at a list of the so-called performance of planning authorities. In clause 1, there is an attempt to say that there will be a definition of failing planning authorities. Is that a sensible thing to be trying to do?

Toby Lloyd: As I said, I do not think that Shelter really wants to get into the question of localism versus centralism, and whether this is appropriate.

Q176 Nic Dakin: It is not about that. It is about whether we can say that that is a good planning authority and that is a failing planning authority, and whether there are criteria that can be used to measure that.

Toby Lloyd: It is a very difficult thing to do, and there are always problems with what is known as Goodhart's law that, when a measure becomes a target, it rapidly ceases to be an effective measure.

Ruth Reed: Within my own professional life, I am aware that some local authorities perform better than others, but that will also depend on the issues at the time. It would have to be some kind of consistent measure over time. What concerns me is that this is to be brought in very rapidly, with a "at a particular point" definition of performing or not performing.

The issue that worries me most of all as a practitioner, outside of my role at the RIBA, is that at its best, the planning process is a consultative and iterative process in which, at pre-application stage and even during the application, you are in negotiation with the local authority about the issues that matter to them and make your scheme viable on behalf of your clients, the developer.

Anything that removes that process and takes a single application as it stands to PINS is denying that process to take part. I imagine that you would not pay for pre-application advice with the local authority if you were going to fast track your scheme to PINS.

Q177 Nic Dakin: Performance is about relationships, attitudes and standards rather than simply measured output. Okay.

Q178 James Morris: Do you have any comments on clause 21 of the Bill, Mrs Reed, in relation to large-scale developments, commercial and business being able to be dealt with by the National Planning Policy Framework rather than by local authorities?

Ruth Reed: Not specific or based on personal knowledge, but it is clear that, when everything is dealt with at a local level, some applications that have impacts beyond the local authority boundary need a wider view, which, with the end of the regions and the RSS, are no longer available.

Q179 James Morris: Do you have any view on the threshold or the size?

Ruth Reed: No, I could not comment on that, sorry.

Q180 Mr Raynsford: May I ask both of you in turn what you feel are the attributes of a really good housing development? Secondly, what are the elements in this Bill that may contribute either positively or negatively in delivering that?

Ruth Reed: We have done some research through the Future Homes Commission, which has looked at what people want from development and, starting from what people want from their homes is a good basis on which to begin. Clearly, space and light are very important. Beyond that, community and the sense of place is highly important. Anything that moves from mixed tenure communities to mono-tenure is going to remove an element of community and possibly, in the rented sector, in the end lead to the history of which we are aware—estates with problems because of their mono-tenure. My colleagues asked whether there would be a problem with the private sector, and I said that you would just die of boredom. I am sure that I am not supposed to make jokes.

The other aspects of good design are to do with community buy-in and an appreciation that the development is part of or an addition to a thriving community. Those are important things to retain in the system.

Q181 Mr Raynsford: Do you think that the Bill will do anything either positively or negatively?

Ruth Reed: There are some process elements of the Bill to do with validation and lists, which I welcome. There are other process elements that are going to help, but I am concerned specifically about clauses 1 and 5.

Toby Lloyd: I would add that, obviously, as you would expect, for Shelter a good housing development must include a decent amount of affordable housing, whether for purchase or for rent, that is truly affordable to local people. As elected Members, you will know that is often what it takes in order to sell a planning application to your local communities in the first place. If we start stripping those out you start to undermine what are often already quite difficult levels of local support for new house building in the first place.

I completely endorse everything that Ruth said about the need for quality in house building, but speed is also required. One problem at the moment is that we build out so slowly. I was interested to hear Andrew in the last session say that if you gave him a 2,000-home permission tomorrow and renegotiated section 106, they still would not build it out for 20 years. I suggest that that might be a more fruitful avenue for investigating why is it that our development industry and the way our sector is set up deliver so slowly, even when planning obstacles have been overcome. We need to answer some of those questions before we can really say what makes a successful housing development.

The first criterion of success is that it has to be built. An unsuccessful place is one that remains half-built for decades to come because, bluntly, it is being built on the presumption that you can sell only one home every week and, therefore, you never build more than 50 in a year. On which model, by the way, large proportions of affordable housing are advantageous, because they are outwith that sales calculation which is the ultimate brake on private development.

Q182 Nick Boles: I have one question for Mr Lloyd. The package of measures in the Bill was announced on the same day as a further £300 million subsidy for more affordable housing. You in your business have the luxury of picking out proposals that you like and perhaps not talking about the ones you do not like, or vice versa. In Government, of course, you are sometimes presented with packages of measures and you can take all of them or none. Faced with the choice of either a further £300 million in subsidy and the measures in the Bill, or having neither, I am interested to know which you would choose.

Toby Lloyd: In all honesty, I would have to choose neither, simply because the value of section 106 in terms of providing affordable housing over the decades is far greater than that £300 million. Of course, we did welcome the additional subsidy for affordable housing, as you would expect us to do. However, I worry that there are measures here that are presented as a short-term solution but will have lasting implications for decades.

Q183 Nick Boles: May I probe a little on that? Do you understand that all that is proposed is that the Planning Inspectorate, in extreme cases where the local authority is not willing to renegotiate, will be able to conduct a negotiation in which it will have very strict tests of viability? Do you have reason to believe that the Planning Inspectorate will be less exacting on viability than any individual authority might be that was willing to renegotiate?

Toby Lloyd: My concern about the practicality in which this is worked out is that statute law is an extremely powerful thing in planning negotiation, most of which

does not have the force of statute behind it. Most of it is guidance, case law and practice. This is a very powerful extra tool in the box for those who will want to negotiate down section 106 agreements.

I would put one hypothetical situation to you. If it is the case that a development is currently, as we heard before, "under water" in financial terms, yet the developer who owns that permission is not choosing to sell it and get out, that is presumably because they believe it will be profitable over a longer time period, say five, 10, 20 years. It does have long-term viability so it is a short-term problem. If you renegotiate that section 106 agreement such that the short-term viability is better, is it not still the case that the incentive will be the same to wait for another five, 10, 20 years, when the profit will be correspondingly higher?

I was interested to hear the Home Builders Federation rejecting any commitment that they must build out as a price of reducing their obligations. Unless there are very strict conditions on developers to ensure that they do build out, there is a real danger that even something that is only an in extremis power can be used significantly to reduce the long-term supply of affordable housing.

Q184 Roberta Blackman-Woods: I would like to follow up on that point. In the previous sitting, it was stated that a condition could be applied that would run out perhaps in a year, so that development would have to be brought forward within a year or the whole thing would have to go back to the inspector again. I am asking you whether you think it would be useful to have the renegotiation time limited, and in fact the site would have to be brought forward for development or the whole thing would have to start again.

Toby Lloyd: It would be an absolute minimum requirement. However, in practice, remember that planning permissions, as they stand, in theory last only three years before they expire but we are talking here—by definition, almost—about agreements that were signed before the credit crunch, so I would question how much the expiration really works in practice. It is very easy to start a development and ensure that it will not actually be built out for another 20 years. There are practical problems about that, which is why you would need stronger teeth, ideally, to say not just that you must start but that you must actually deliver to an agreed schedule.

I would also suggest that if we do go down this route, it is reasonable to say that if obligations are reduced on the grounds that this is what is necessary for short-term viability—and if over the five years it takes you to build out, the market has turned and you end up making vast amounts of profit on the site—it is not unreasonable for there to be a clawback provision that says that in those circumstances, a commuted sum is paid to compensate the local authority for the lack of affordable housing, which was not provided in the first place. That requires honesty and transparency on the part of developers so that we know what the viability really looks like over the whole life of the scheme, not just at the moment when they are presenting saying, "I need to reduce my planning obligations."

Q185 Roberta Blackman-Woods: That is very helpful. We heard from the Minister this morning that once failing authorities have been put on this list, there will be a process of negotiation that could result in their being taken off it. I think that one measure that was going to be considered was local planning performance agreements, which might extend the time, but I am not completely sure. Is there anything that you would put into a list of things that authorities might like to use, for example if they are in a heritage area and they need to consult on whether they should have an archaeological dig or they need to get some additional information? That is just an example, and I wonder whether you have anything up your sleeve that you think should be thrown into the pot.

Toby Lloyd: A clear and transparent assessment of housing need is an absolute pre-requisite for a local plan to be successful.

Ruth Reed: If I can come in on that, as every site is absolutely specific, one could not make a sweeping statement about what information or particular circumstances could apply across an entire local authority area.

Q186 Roberta Blackman-Woods: I was looking for examples that authorities might use. It does not have to be pertinent to a particular development.

Ruth Reed: For example if a local authority was 90% green belt?

Roberta Blackman-Woods: Possibly.

Q187 Dr Thérèse Coffey: Can I put it to you, Ms Reed, that architects, including some in my constituency, are going mad because councils are rejecting things because they do not like the design of them even though planning officers had given indications about that? Housing associations sometimes reject houses that have been built because they are not quite on spec, and then they are re-presented to the private market. Is there not a case that sometimes local issues really do get in the way of houses and commercial buildings being built?

Ruth Reed: Local issues get in the way of development in all sectors, because the process is essentially a local political process. Local views will, therefore, always be heard more dominantly than perhaps those of the wider area or even national requirements. That process is always hindered by nimbyism, if you would call it that, but things might be uncovered during the consultation process that are worth considering. We have to be even-handed with the idea.

However, the major problems for us as a profession are in getting applications validated in the first place, disproportionate requirements for the information supporting applications, and often late requests for that information during the process of an application going through to committee. As I said earlier, I welcome the idea that there should be some review of what needs to support an application to make that a smoother process, but there are indeed frequent obstructions as people exert their democratic right to put in any objections made as they are asked and consulted on.

Q188 Dr Coffey: I do not know whether the figures that the Minister has include the numbers withdrawn by developers. Do you have any feeling from your members about how often that happens—essentially, how often they end up withdrawing rather than necessarily going through all the legal stages?

Ruth Reed: It would be possible to find that out, and I do not have the figure, but the biggest unquantified metric that you would want is how long it takes to get applications validated. That process is very difficult to appeal. You would have to be able to demonstrate at appeal that you had a valid application, and that the local authority failed to validate it and proceed in a timely manner. Without the benefit of a proper negotiation and discussion with the local authority, that puts you at a disadvantage. Very few developers would ever want to proceed with that.

The problems around non-validation that we hope to collect from our members are the one thing that they bring to us constantly: "We cannot get this application off the ground in terms of the planning process because the local authority hasn't even put it into the system." You cannot find out how many are obstructed in that way.

Q189 Dr Coffey: That is very interesting.

Mr Lloyd, I have two questions. I was shocked earlier in the year to find that one of my local housing associations had more than 100 empty homes, and was still trying to see what it could do to get more new build. What advice do you have on how we can factor that in?

On the other matter, there was an old hospital in my local area that was due to be converted into apartments—I was opposed to it at the time—and a deal was done whereby, effectively, there would be no affordable housing but a substantial amount of the money would go to providing a brand new, bigger health centre. That was a good deal for local residents.

Toby Lloyd: I am absolutely not going to comment on individual planning applications, because every case is different. I get journalists phoning me up all the time saying, "Will you express outrage at this application or that permission?" The truth of the matter is that they are always individual cases. Unless I know the detail, I could not possibly say whether that was a good deal or not, or whether it would have been better to insist on affordable housing. I honestly do not know.

Q190 Dr Coffey: But you do recognise that there may be situations in which having no affordable housing is not actually a bad thing?

Toby Lloyd: By dint of what I said—it is always case by case—it must follow that there are some cases in which that is true. In general, we always encourage more affordable housing, but I accept that, yes.

In terms of empty homes, of course. No one wants homes left empty, and we always support any measure that will help bring them back into use, but I am afraid that any amount of effort put into bringing empty homes back into use will not change the fundamental, urgent need to build far more new homes in this country. There are simply not enough empty homes out there to make a significant difference in the massive undersupply that we have seen for decades in this country of homes in all tenures and at all price points. Now is a critical moment for the Government not only to deliver economic growth but to start fixing some of the long-term, fundamental problems in our housing supply system. For decades we have been leaving hundreds of thousands of households behind in terms of the number of homes that we deliver.

Q191 Dr Coffey: I do not have anything more to add to Mr Lloyd. Coming back to Ms Reed, are your members finding more problems with housing projects or with commercial projects? Do you have a feel for that?

Ruth Reed: The problem that I was outlining about validation is common to all planning applications and not specifically housing.

Q192 Mr Raynsford: I have a question on a point of detail, prompted by Toby's comment on the entirely sensible approach that, in some cases where viability may be in doubt, there could be a case for renegotiating, with perhaps less affordable housing at the start and then a profit share or overage agreement to provide more affordable housing later as the scheme becomes more viable. Again, as I read it, that suggestion would fall foul of the provision in clause 5(6)(c), and that probably ought to be looked at because one does not want to prevent artificially a sensible agreement that could have an element of providing more affordable housing over a longer period and, therefore, address the viability issue. However, as it is currently drafted, clause (5)(6)(c) would put a block on that.

Toby Lloyd: When I read this Bill, it raises the question, "Is this an attempt to fix a short-term economic conditions problem"—in which case it might be a bit of a sledgehammer to crack a nut—"or is it actually an attempt to ratchet down permanently the amount of affordable housing that is provided through section 106?" That is a genuine open question but I absolutely hope for reassurance that the latter is not the case, and we absolutely expect to hold the Government to their commitment that this Bill will produce more affordable housing and not less.

Mr Raynsford: I would love to answer that question, but it is not my role to do so.

Nick Boles: I am meant to be asking the questions, not answering them. We will have other opportunities.

Q193 Andrew Stunell: I wanted to go to the quality and quantity question, but I thought that I would put two points of evidence to Mr Lloyd before I did that. First, I think you suggested that it was the availability of social housing that made development attractive to local communities. I wish we lived in such an ideal world, but I have to report that with a large scheme in Stockport the petitions are coming in to say that people would give their consent provided there was no rented housing in the development. One needs to be careful about what evidence one calls into play.

The second thing that I wanted to say is that, bearing in mind that bringing empty homes back into use last year supplied about 20% of the new homes that were occupied, one should not mark down empty homes as an important factor in the housing stock.

However, if we talk about quality and quantity, I think that you both shied away from a realisation that if you have higher quality it will cost more and, therefore, for a given sum of money you will have fewer homes. I just wondered if you would like to tell us how you think that plays in section 106. Would you want the renegotiations that take place to say, "We'll accept 40 houses rather

than 50, but we want them to be of a higher standard", or would you suggest that we should be looking to the Planning Inspectorate to say, "We want 60 homes rather than 50 and we'll have them to a lower standard"?

Ruth Reed: I think it is a very simplistic view of the issue when the problem of the economics of housing is to do with the availability of private finance, because the provision of affordable homes is linked to the ability of the market to buy homes. I think it would be wrong to cast the idea that it would come down to a strict quality and quantity measure. I feel that any negotiation of numbers—either up or down—should require the properties to be of a good standard, if not an excellent standard, and that should be inherent in any planning negotiation for any tenure.

We have real issues with the quality of the homes that we build in this country and I think it is important that every opportunity is taken—including this ability to renegotiate section 106 agreements—to drive quality. The issue of the developer's ability to fund the building of affordable homes within the mix should be addressed across the board for delivering quality across the board, so that if high quality is required for affordable it is also there in the private sector as well. Quality should not be on the negotiating table; it should be a given.

Toby Lloyd: I would absolutely agree with that. One consequence, economically, of its being a given is that it should be written into the land value and therefore should not be part of that viability calculation in the first place, because it should be priced in when the land is paid for.

On the points that you raised specifically about rented housing, I would say that affordable housing is often part of the appeal for local people. Unfortunately, large amounts of private housing are now bought by investors for private renting, so your local residents concerned about rented housing will not get what they want by losing affordable housing commitments—quite the opposite. They will see exactly the sort of short-term, high-churn rental accommodation that they are concerned about if you water down the affordable housing proportions. At least social housing and affordable housing for purchase are there for the long haul, unlike the private rented sector.

I would not, of course, want to disparage any attempts to bring empty homes back into use. We need all the housing that we can get from every source. However, I am afraid that if we are effectively getting 20% of our new homes from bringing empties back into use, that is testament to the woeful number of new homes we are building. It does not suggest to me that we can solve the housing problem by bringing empty houses back into use; it suggests only that we are nowhere near building enough new homes.

Q194 Andrew Stunell: Can I take you a little further on the point about quality and quantity? We are talking in clause 1, and indeed in the whole Bill, about the contribution that the private construction sector can make to social and affordable housing, so it will inevitably be built off the profit margins that exist. There is a separate argument about subsidy, as you say, and about the work of housing associations. When we are talking about how best to use the surplus that exists in private sector development, we are talking about a fixed sum. Indeed, the starting point of this debate is that it is a shrinking sum; it has shrunk over the last three years. Whether we sustain the numbers or sustain the quality is not a trivial question, and I am interested in knowing where you think the balance should be struck.

Toby Lloyd: I absolutely accept that it is not a trivial point, and I am not trying to wriggle out of it in any way, but I really think that there is a serious question here about whether there is such a fixed sum. Development is not a zero sum game; it is a positive sum game. After all, developers engage in it because they quite rationally and reasonably seek to make a profit on their activities, so the question is the process by which they calculate the profit that they can make, and that is done through the residual land valuation method. That means that the costs that they expect to bear through development, including the cost of planning obligations, building regulations and everything else, are factored into the price that they pay for the land. If you lower those obligations, in the very short term you may improve the current viability of some sites, but in the medium term all you do is increase the land value for the benefit of existing landholders, who can increase the amount that they charge the developers. You do not get any more quality as a result; you simply lower the quality and increase the return to the landholder.

Q195 Andrew Stunell: So, your answer to the question?

Toby Lloyd: My answer is to reject the suggestion that there is a fixed sum that has to be divided between quality and quantity, because unfortunately as soon as you get into that game, you end up with neither. You have to insist on both across the board, as Ruth said. Section 106 agreements do not say anything about quality; they are about the quantum of affordable housing. The quality arguments come elsewhere in the planning system and in the building regulation system, which, as Ruth said, are currently being reviewed. We welcome that process because while we are always in favour of strong support for quality across the board, I think there probably is work to be done to clarify and simplify some of the growing number of standards around building quality.

The Chair: If there are no further questions from Members to the witnesses, that brings us to the end of our business for the day.

Ordered, That further consideration be now adjourned. *—(Karen Bradley.)*

4.44 pm

Adjourned till Tuesday 20 November at five minutes to Nine o'clock.