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GENERAL COMMITTEES

Public Bill Committee

GROWTH AND INFRASTRUCTURE BILL

Third Sitting

Tuesday 20 November 2012

(Morning)

CONTENTS

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Saturday 24 November 2012

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

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

Adrian Penfold, Author of the Penfold Review

Trudi Elliott CBE, Chief Executive, Royal Town Planning Institute

Dr Hugh Ellis, Chief Planner, Town and Country Planning Association

Malcolm Sharp, President, Planning Officers Society

Vincent Haines, Convenor, Urban Design Forum, Planning Officers Society

Robbie Owen, Secretary, National Infrastructure Planning Association

Angela Knight, Chief Executive, Energy UK

Pamela Learmonth, Chief Executive, Broadband Stakeholder Group

Public Bill Committee

Tuesday 20 November 2012

(Morning)

[Mr George Howarth *in the Chair*]

Growth and Infrastructure Bill

Written evidence to be reported to the House

GIB 12 Gerald Eve LLP
GIB 13 National Housing Federation
GIB 14 Kate Southworth
GIB 15 Pauline Bradley
GIB 16 Local Government Association
GIB 17 Deloitte on behalf of the BST Group
GIB 18 Woodland Trust
GIB 19 The Federation of Bath Residents' Associations
GIB 21 Mrs Linda Taylor
GIB 22 Keith Dowson
GIB 23 Colliers International
GIB 24 Tom Emlyn Jones

8.55 am

The Committee deliberated in private.

Examination of witness

Adrian Penfold gave evidence.

8.57 am

The Chair: We will hear oral evidence from Adrian Penfold, the author of "Review of non-planning consents". I remind members of the Committee that questions should be limited to matters within the scope of the Bill and also that we should stick strictly to the timings in the programme motion that the Committee agreed. If necessary, I will cut Members off in mid-sentence, but I am sure that will not be necessary.

Welcome, Mr Penfold. Thank you for agreeing to give evidence.

Q196 Roberta Blackman-Woods (City of Durham) (Lab): Can you tell us how far the provisions of the Bill address the issues that you identified in your review of non-planning consents? Are there any other areas that you think remain to be addressed following your review?

Adrian Penfold: Good morning. Some of the provisions are directly related to the recommendations that I made in my review, which was completed two and a half years ago, so sometimes it is hard to recall. The village green clauses relating to stopping-up orders and footpaths, and particularly the clauses relating to the extension of the development consent order to business and commercial projects, are all directly related to recommendations that I made.

Other elements of my review are incorporated in the Enterprise and Regulatory Reform Bill, particularly in relation to heritage matters. A lot of other work has been done that did not require primary legislation, but was more to do with the culture, the efficiency and the operational factors involved for the various consent givers, particularly the main agencies: the Environment Agency, Highways Agency, the Health and Safety Executive, Natural England and English Heritage, all of whom have done a lot of work over the last year or so. My feeling is that a lot of work is going on at the moment implementing the review recommendations.

On the question of what more could be done, a lot of the recommendations in the review were about the experience of the applicant for the various consents and of other stakeholders who are involved in the process, such as consultees and local communities. We are exploring opportunities for further integration of the various processes. Integration may be too strong a word; more alignment and better interaction between the various consents. We found some 86 different consents that might be required to implement a development, and some developments require as many as 30 or 40 of those consents. The alignment and the interaction between them is very important so there needs to be more work there.

There also needs to be more work on one-stop shop, which is more about the culture of the way in which the consents operate within the consent-giving organisation. Many are dealt with by local authorities, for example. There should be better alignment between the various consents—highways consents, environmental permits, as well as planning, of course—and also between consent givers.

The improvement plans that have been produced by the five agencies I referred to should be reviewed on an annual basis. To my mind, there is more work to do on Government oversight. One of the things we found was almost a silo approach. A lot of good work is going on reviewing the operation of the various consents in different Departments across Government; I met regularly with eight or nine Departments that were represented on the management board of the review, but what seemed to be missing was somebody with an overview of the process who can look at it from the perspective of the applicant and other stakeholders.

Q197 Roberta Blackman-Woods: Did you have any particular opinion about what that Government oversight should be?

Adrian Penfold: As I said, I finished the review two and a half years ago, in July 2010. I do not spend all my time on the review or looking at the way the Government are working on implementing it. There was at one point a committee in the Department for Communities and Local Government that had taken on the task to some extent. It would have to be some sort of interdepartmental body, and there would have to be strong leadership as well. I am not expert enough on Government to know where that leadership might come from. There has to be a will to do these things to make sure that there is co-ordination and that we do not get more duplication—there is already a lot of duplication—and overlap. I am not entirely sure how that would work, but it does not seem beyond the wit of man to come up with something that would do that job.

Q198 John Howell (Henley) (Con): Good morning, Adrian. Eighty-six consents seems a horrendous number. Can you give us a bit more indication of the scale of the problem?

Adrian Penfold: We found 86 in March 2010. We kept finding more; there were an awful lot. As I said, as many as 30 or more could be needed. A large chemical plant would be a good example of the sort of project that would need a lot of consents. One has to concede that terminal 5 at Heathrow is an extreme example, but 37 different consents were needed to do that project under seven different pieces of legislation and involving 20 different consenting bodies. The Planning Act 2008, which introduced the national significant infrastructure project appraisal—the development consent order process—was in many ways a reaction to that. It was an attempt to consolidate things and bring them together in one place with one decision maker under one process. That was very welcome, and the provision in the Bill to extend that process to business and commercial projects is also very welcome.

Q199 John Howell: With that approach, what level of duplication was there?

Adrian Penfold: There was a lot of duplication. Duplication, for the most part, is duplication between planning, which has grown enormously in its scope over the last 10 to 15 years, and the other regulatory regimes. I have been a planner for a long time, and I shall give you an example. When I first started as a planning officer, walking the streets of Fulham dealing with planning applications, one of the things that we could not deal with at all was construction impact—the impact of lorries and construction activity, such as noise and air quality issues.

Over the years, planning has taken over that area and does a huge amount of work, rightly in my view, to make sure that those impacts are limited and mitigated. But, in doing that, it is duplicating a whole area of environmental permitting and other legislation which, in my day as a development control officer, was handled completely separately by the environmental health department. That is one example where planning has taken a much bigger role in an issue area. The other regulatory consent-giving part of the landscape is not withdrawal from that area. Both deal with it and that can lead to confusion. There are many other areas where similar things happen.

Q200 John Howell: You have spoken about the need for Government oversight and the breakdown of the silo mentality. Can you give us a feel for what difference that would make if it was properly organised?

Adrian Penfold: The first thing it would do would be to review new legislation, as it came forward. With much of this, it is not whether things are required; one of the conclusions that we drew during the review was that there was very little regulation covering areas that did not need to be covered at all. We recommended the repeal of one piece of legislation. It was clearly part of the brief to look for areas that could be repealed, and we found very few that could be repealed.

It was more a case of looking at the overlap and making sure that any new legislation that comes forward did not create more problems. "Is it already being dealt with by planning?" would be the first question I would ask of almost anything—or could it be dealt with by planning or should it be dealt with by planning? If it is, does it need to be dealt with by something else as well? That is new legislation. There is more work that could be done—almost a forensic analysis of what is already there, and how much overlap and duplication there is.

Another example would be the building control part L provisions that deal with the energy performance of buildings, which over the years require, quite rightly again, buildings to become more and more energy-efficient. That is fine, but now planning does that as well; many planning authorities will have their own codes for looking at exactly the same thing. One could ask, "Why is that necessary?" The argument might be, "Well, it's a localist approach," but my view would be that it should be handled at national level. If it is not necessary, what savings could be made by doing things more efficiently—only doing them once, rather than twice? There is a whole range of questions that a body of that sort might be able to get into.

Q201 Mr Nick Raynsford (Greenwich and Woolwich) (Lab): If I correctly interpret your evidence, it is that rationalisation and removal of unnecessary duplication is the key, rather than the repeal and removal of requirements, most of which in your view are necessary but perhaps not properly handled at the moment. Is that correct?

Adrian Penfold: Broadly, it is correct. The sort of analysis I have just spoken about could result in some repeal. You could say that planning can deal with highways orders or footpath issues, so we no longer need that particular bit of legislation. That could come once you get into the analysis, but I am not saying that the Government are regulating and controlling things that, by and large, do not need to be regulated and controlled.

Q202 Mr Raynsford: That is very helpful. Are there any areas in the Bill that you think might create new overlaps or duplication? I draw your attention to clause 1 in particular, where, if the Bill is enacted, the provisions for the determination of planning may be directed in the first place to a body other than the local authority.

Adrian Penfold: It is more about who is making the decision, rather than the issues that are being considered and how they are being considered. It seems to me to be taking the consent-giving power away from one authority and giving it to another. There is still only one authority actually making the decision.

Q203 Mr Raynsford: No, the Secretary of State may direct an authority to perform certain functions, even if he has taken away those powers.

Adrian Penfold: But there would be a separation of functions, I would have thought.

Q204 Mr Raynsford: There would be duplication.

Adrian Penfold: If there was duplication, clearly my analysis would suggest that I would not agree with it, but it is not something that struck me when looking at the clause or reading a lot of the comments on it. It did not seem like a duplication point to me; it seemed more a point about who should be making the decision.

Q205 Mr Raynsford: Do you think that there might be some confusion about who should be taking the decision? Last week, we heard from witnesses who implied it would be very difficult to define objective criteria that would determine whether an authority was failing in a way that would justify removing its powers.

Adrian Penfold: It would be difficult, but not impossible. I know that the two areas that have been talked about are time taken and, I suppose, inconsistency—a policy not being applied properly and applications therefore being overturned on appeal. Those are the two broad areas that were looked at, and which I think would not be unreasonable. One might want to have some sort of metric around how customers experience the service; that is important. But no, it is not impossible, and in fact, we have had eight-week targets for many years. I managed a planning department with eight-week targets, and occasionally struggled with those targets, so I think that planning authorities are very used to having to deal with those sorts of metrics and targets.

Q206 Mr Raynsford: The Secretary of State obviously had difficulty identifying which local authorities might be identified as failing authorities. You have not read the speech he made during Second Reading?

Adrian Penfold: I have read his speech, actually. Yes, I take the point—I can see that he did.

Q207 Nic Dakin (Scunthorpe) (Lab): In answer to Roberta's question, you mentioned the provisions on town and village greens being taken forward in a way that you felt was correct and in line with your report. The Open Spaces Society and the Campaign to Protect Rural England are essentially saying that the provisions in relation to town and village greens give us a sledgehammer to crack a nut. What is your response to that concern?

Adrian Penfold: Obviously I do not agree with it, because one of my recommendations was directly related to village greens and the need to try to ensure that they do not cause a problem after planning. There is evidence of game-playing—of people waiting almost until the planning has been dealt with, or until very late in the day, to make an application. We certainly received written evidence on that. Something needed to be done about it. It is also very much aligned with my general proposition, which is that the issues that we called the ifs—whether the development should be allowed to go ahead or not—should be dealt with either as part of the planning process or alongside and at the same time as the planning process. When someone comes to the point where they have planning permission, there should be reasonable certainty that that development will be allowed to go ahead and all other matters should have been considered. The town and village green designation seems to fit firmly in that area. It definitely should be considered, either alongside, as I think is being proposed in the measure, and/or as part of the planning process.

Q208 Nic Dakin: You do not think that these proposals make town and village green designations more vulnerable for genuine town and village greens.

Adrian Penfold: No, I would not have thought so. In some ways, it highlights the issue raised earlier. If there is an issue around whether a space is a town and village green, there is an incentive on people to look at it before and during the planning process. I do not think it is a way of avoiding the issue; it is a way of dealing with the issue at the right time.

Q209 Nic Dakin: You think that these proposals bring that issue out at the right time and ensure that local people can put those concerns forward.

Adrian Penfold: I do. It is not actually what I recommended. I recommended a certificate of immunity approach, which is how listing designations are done. An owner of a building can make an application for a certificate of immunity from listing, which lasts for five years. Whether the building should be listed or not is then considered. If the certificate of immunity is not granted, the building is usually automatically listed. I thought that something similar could be applied to the town and village green designation process and how it fits with planning. What is in the Bill is a better way of dealing with it than I came up with.

Q210 Simon Danczuk (Rochdale) (Lab): Good morning, Mr Penfold. How much impact will the Bill have on growing the economy?

Adrian Penfold: I attended the session last Tuesday morning, so I heard the question asked and have had some time to think about it. I think that the planning and non-planning consents are all about controlling and regulating development. In so far as development is related to growth—it clearly is—those consents will have an impact on growth. They are about balancing that economic growth objective, or the economic imperative behind the development, with environmental and social factors, and coming to a conclusion. I believe that that balance between the economic factors and the environmental and social factors needs to be properly considered and kept under review. That is partly what the national planning policy framework was about, and it has done that quite successfully in my view. Those policies need to be properly applied and the processes need to be operationally efficient and also democratically legitimate.

Q211 Simon Danczuk: Is that a lot or a little?

Adrian Penfold: In terms of the impact they can have? It will vary.

Q212 Simon Danczuk: The question is whether the Bill will have a big impact or a little impact on the economy. What will it do to stimulate growth?

Adrian Penfold: It will have some impact. There are all sorts of issues affecting the economy. Clearly, it will not affect what is going on in Greece or the eurozone. I was quite attracted, when re-reading the evidence, by the formulation of the National Housing Federation, which referred to village greens, describing the designations as the third hurdle. There is finance, planning and these designations—these other matters—all of which can have an impact on whether something happens.

Q213 Simon Danczuk: Do you think the Bill will have any adverse consequences for the environment?

Adrian Penfold: Do you have anything particular in mind?

Simon Danczuk: No.

Adrian Penfold: I do not think it will have adverse consequences. I cannot see anything in there that should do that. It seems that nothing will take away the local plan-based approach in the planning aspect. For example, for clause 1 proposals, the decision will still need to be taken on the basis of planning policy. It seems to me that there should not be an adverse impact.

The Chair: Order. We will need to move on to another section shortly. If we can keep the last few questions and responses brief, we will hopefully be able to cover the whole ground.

Q214 John Howell: Adrian, can we pick up a point that Nick Raynsford made with you on clause 1? I see no potential for duplication or confusion in this. Can you confirm that?

Adrian Penfold: I cannot see duplication. I suppose the only confusion would be that you would not necessarily know who was going to be determining the planning application at the end of the day, but you do not anyway. When you submit a planning application, there is always the possibility that it might be called in or be refused and go to an appeal, or you might appeal against non-determination, in which case the Secretary of State, or probably the inspector, ends up dealing with the application.

Q215 Roberta Blackman-Woods: Can I take you back to the answer you gave about damage to the environment and to clarify your comments in the light of clause 7? We have received evidence from a number of organisations that are concerned about the loosening of the protection given to national parks and areas of outstanding natural beauty in terms of electronic communications. This could involve large cabinets; we are not sure whether it covers telephone masts. Is there not a real danger that clause 7 will weaken the protection against unsightly or inappropriate development?

Adrian Penfold: I have to admit that I have not paid a great deal of attention to clause 7. I could try to answer that question, but I would be mainly focused on the areas that have come straight from my review. I expected that I might get questions on clause 1, for example, so I prepared for that. I have not given the attention that perhaps I ought to have done to clause 7, so I would prefer not to say.

Dr Thérèse Coffey (Suffolk Coastal) (Con): I was going to ask about the broadband aspect. Has there been any evidence in your initial review that not being able to get planning permission has deterred investment in not only our rural landscapes, but some of our city landscapes?

Adrian Penfold: We were not looking at planning at all. We were looking at everything else but planning.

Q216 Dr Coffey: I mean the different consents. I will take you on a different one. The Marine Management Organisation is now conflicting with the Environment Agency, potentially, on different parts of coastal development, trying to get consents for all sorts of things—not necessarily planning, but just trying to operate. Can you tell us more about some of the coastal work that you may have looked at?

Adrian Penfold: It was specifically excluded from the review.

Dr Coffey: Coastal was?

Adrian Penfold: Yes, or marine operational activity. I cannot remember exactly why, but I think there was a different review at the time looking at that, so we did not look at it.

Q217 Dr Coffey: The MMO is not necessarily solely about marine. For example, there are complications at the port at Southampton that led to various issues about the construction of new onshore developments. You were told not to look at any coastal stuff at all?

Adrian Penfold: It was excluded from the scope. It was the one subject area that was excluded. There may be some general principles there that we could explore, in terms of some of the things I have been saying about alignment or interaction between regimes, but we did not look at it specifically.

Dr Coffey: Okay. I really want to talk about broadband later, at 10.30 am.

The Chair: Are there any further questions for Adrian Penfold?

I thank Mr Penfold for his forbearance at the questions and for the information that he has helpfully been able to share with us.

Examination of Witnesses

Trudi Elliott, Dr Hugh Ellis, Malcolm Sharp and Vincent Haines gave evidence.

9.26 am

Q218 The Chair: Welcome. For the record, will the new witnesses please introduce themselves to the Committee?

Malcolm Sharp: I am Malcolm Sharp, president of the Planning Officers Society.

Vincent Haines: I am Vincent Haines, cabinet member of the Planning Officers Society.

Trudi Elliott: I am Trudi Elliott, chief executive of the Royal Town Planning Institute.

Dr Ellis: I am Hugh Ellis, chief planner at the Town and Country Panning Association.

Q219 Roberta Blackman-Woods: I want to start with clause 1 and the idea that planning departments might be designated as failing. What are your views on clause 1? Do you think it will encourage local authorities to raise their game, or will it further demoralise the service? If you could all give me a short answer, that would be helpful.

Malcolm Sharp: We start fundamentally from the point of view that the system as a whole is not broken. Most planning officers and my colleagues are working their socks off to bring development forward. The Planning Officers Society has no part in condoning poor performance. There are, around the country, a few areas where poor performance can be demonstrated, but I do not believe that that is in very many authorities.

If any of you saw "Planning" newspaper last week—not that I am an advocate for "Planning" newspaper—it did its own analysis and came up with about six authorities out of 300 plus goodness knows how many, so I think that this is rather a strong measure to catch a few, and the danger is that it will be self-defeating, because it will help in the spiral of decline. What those few planning authorities need is support. Certainly, agencies such as the Planning Advisory Service and we ourselves try to support authorities to get their house in order.

Trudi Elliott: We are concerned about the use of solely metrics. One needs to look at past experience of dealing with poorly performing local authorities. We need to be clear that what is happening here is the removal of planning decisions from elected members to planning professionals in PINS—the Planning Inspectorate. The Government have a lot of experience of intervening when they need to in relation to poor performance, but that often requires an examination of the qualitative "so what?" question. That is to say, what is the quality of the decision?

I can give you an example of why the measure is more complicated than simple metrics. The metric triggers where you might look, but then it causes a challenge if you simply rely on that. If you look at Stratford-on-Avon, which is one of the lowest scoring councils in relation to the 26-week rule, up until 2008 it was hitting its targets, but it was getting a lot of complaints from all parties. The members and the chief executive were concerned, so they introduced a system whereby they were trying to get it right first time. Now, although they do not hit their timing targets, they approve 90% of applications first time. They have got a significant reduction in complaints and they use conditions less, because they encourage all parties to talk to each other and effectively undertake a sort of arbitration role.

This is slightly more complicated than timing and how many times you are overturned on appeal, although the metrics do trigger where you might look. Our concern is that we might spend a lot of resource doing this, when there might be quicker and more elegant ways of getting performance up. We need to get the performance of the poorer up to that of the best.

Dr Ellis: In relation to speed, appeal rights already exist. We are puzzled and slightly concerned about the measure because applicants already have strong non-determination appeal rights in the system. Nobody wants to see local authorities perform poorly, but the reasons they do are complex. There is an important principle that we are worried about: this is the first time, as far as we can see, that a new form of planning is emerging where the decision is no longer in the hands of local, accountable councillors. That is a significant change. It may be used only in extremis, but we think that that development is too significant to deal with a problem that is quite limited. I entirely agree with Trudi that there are other ways in which you could deal with poor performance. Ultimately, the losers are the local electorate.

Q220 Roberta Blackman-Woods: Later on, I might come back to explore the whole localist or anti-localist provision of the clause. If the clause was about improving performance, what might we expect to see in it? How would you advise the Government to improve performance, if it were not the measures in clause 1?

Dr Ellis: From our point of view, it is about focusing resources through organisations such as ATLAS and the Planning Advisory Service. It is about skills, culture and performance. It is also, certainly from TCPA's point of view, about working with councillors and training for councillors. One of the most significant issues that would really change the culture is a proper and growing understanding of what planning is about—both its opportunities, which we think are extraordinary, and its limitations—and communicating that to local councillors.

Q221 James Morris (Halesowen and Rowley Regis) (Con): Dr Ellis, are you therefore suggesting that it is not possible to create objective criteria to judge whether a local planning authority is performing poorly?

Dr Ellis: No, no. I think it is possible to create those criteria. I am suggesting that the outcome of that, in terms of a punitive action, is focused in the wrong place. I am sure we could develop an idea about—

Q222 James Morris: What would be some of those objective criteria, if you had a blank piece of paper?

Dr Ellis: If we had a blank piece of paper, TCPA's top priority would be quality of outcome. The issue of speed—whether it is 13 weeks—is easier to judge. The issue of poor performance in relation to that might be one way of measuring achievement, but for us the planning system has to be about high-quality outcomes. If you have a performance regime that drives down on speed, one of the perverse outcomes is that you get speedy but not very good outcomes for planning. Certainly, the English planning system cannot afford to have poor outcomes. Our criteria would have to be sophisticated enough to judge that outcome of quality. That is hard to do, of course.

Q223 James Morris: Ms Elliott, you talked about qualitative criteria. What would be qualitative criteria?

Trudi Elliott: Previous attempts, quite a lot of which have been successful in driving up performance in poorly performing local authorities, have tended to use a mixture of the sort of criteria we have talked about—things you can measure—and a combination of either measuring some form of outcome, which might be how many of the planning decisions actually get implemented, or some sort of inspection regime, so you get under the skin. That is what every other poor performance Government intervention has had some element of. The trouble with that is it is resource intensive. CLG, in particular, has had a lot of successful experience of dealing with poor performance. Previous regimes have turned round very poorly performing authorities on a whole range of things. There is a lot of experience in the Department, and also in the Department for Education.

Vincent Haines: There is documented evidence in terms of the previous performance regimes that were linked to rewards, where authorities who were pursuing the rewards and the incentives that were offered perversely delayed the process by seeking withdrawal of applications, or determined applications without any benefit to the applicant at all. They were not entering into negotiations. Therefore, they were chasing the targets and the rewards that came with them.

Malcolm Sharp: I have a 1,000-house scheme in my authority at the moment, which has been around for a long time and certainly way beyond the 13 weeks. The

original hold-up was highway problems and a Highways Agency directive. Then, having got over that, the recession hit, and now the developers do not want us to determine it, because they want to put in a new scheme and not to start from scratch. It is not easy just to look at the metrics without going behind things.

Q224 James Morris: Mr Sharp, you thought that only very few local authorities were underperforming, but on the basis of us not being able to agree about what an underperforming local authority is, how could you come to that judgment?

Malcolm Sharp: I was judging on the basis of what is being put forward at the moment—if you take it on the face of it in terms of timeliness and appeal success. I was judging it on those that seem to be the ones at the moment, but I agree as well that behaviour and culture are hugely important. As I go around the country, one of the things that I say to my colleagues is that if we work hard enough, we can almost make any system work, if we have the right attitude and the right culture to deliver what needs to be delivered for that particular area.

Q225 Simon Danczuk: Starting with you, Dr Ellis, on section 106 agreements, what do you think defines economically unviable developments, and are the Government getting that right in the draft Bill? I will ask for a view from everyone.

Dr Ellis: The evidence behind changes in the renegotiation of 106 is not well represented in the impact assessment or other Bill documents, and it has led us to be very concerned about the outcome. In relation to the first part of your question, actually it is quite straightforward. If you apply a residual valuation process to individual schemes that are stuck in the system, largely because landowners bought land at high prices, perhaps at the wrong time, you will be able to find all sorts of ways of reducing cost. The Bill would focus that cost reduction on the removal or downgrading of the amount of affordable housing to be taken out of 106. We are genuinely curious about why only affordable housing is included, but the outcome for us is significant. There is no doubt that viability is important, but viability can be dealt with through multiple mechanisms. In particular, the Government's work on unsticking individual sites, which they are doing at the moment, shows how that can be achieved. But the outcome of the measures as drawn reduces the quantum of land with permission for affordable housing—that is simply an outcome—and if the measure were taken to its logical conclusion, which is on sites where affordable housing might be reduced to as low as 5%, that has a very significant impact.

The really important issue for us is that planning has made one or two mistakes. Those mistakes, particularly in the '60s, were founded on building communities with a monolithic social profile. We all recognise that we must never repeat that mistake. If you are not careful, the consequence of these measures is that you will build communities that are polarised from the beginning. Since housing development has a lifetime of 100 to 150 years, that is not something that is easy to put right, so however we proceed on the issue of viability we have to deal with the need and the overwhelming concern that planning should have to build inclusive and socially mixed communities. My suggestion is that the Government could achieve this very effectively by deploying the £300 million they have announced, which is very welcome, to unstick development sites up-front in the development process while leaving the requirements for affordable housing intact.

Trudi Elliott: I agree with what Hugh said, although we absolutely applaud Government and local authority attempts to unblock stalled developments and get shovels in the ground, because the economy needs it and we have a chronic need for additional housing. We start from that point of view. In our discussions with some of our members in both Government and Opposition sides of the House, sometimes the issue is not the quantum of affordable housing but phasing and when you have to pay for the affordable housing requirement. That is not just for affordable housing; we are finding that it is also the case in terms of, say, highways authority requirements. What developers often need is a different time profile in terms of the payment, which is the ability to build and dispose of some of the properties before they have to meet their section 106 obligations. That is an area we need to look at.

Our concern with the provision itself is that it may have the undesired consequence of stalling some sites while people wait for the legislative arrangements to come through. Anything that stalls things is bad, from our point of view at the moment. Again, laudable objective, wrong exam question. The exam question for me is: how could we fund affordable housing on these sites? Section 106 has always been an imperfect mechanism for funding the affordable housing that we need.

I urge the Government to look with the Treasury at whether there are financial instruments and other ways we can free up resources so we could say to developers, "Okay, what's the gap? If it were not a phasing issue, it's a real money issue, that is a real viability rather than a phasing issue. How much do you need from us? How much can you put in, yourself, to get this scheme going now?" That would be the way I would focus my attention. We need to pay as much attention to sites that are stalled for other issues, not just affordable housing in particular. How can we free up the sites where highways issues are the challenge? There are a lot of those, and they are some of the big ones.

Malcolm Sharp: I will not repeat that, because there is a lot of it that I absolutely agree with; I want to concentrate on another point. CLG, working with PAS, has set off looking at blockages on a whole range of sites. We have not heard the result of yet, but given my own mini-survey—looking and talking to colleagues around the country—I would be surprised if there were one of those sites where the 106 on affordable housing is the real sticking point. The blockages are often, as has been described. That is not to say that viability is not difficult. Of course it is. It is important, and we need to find ways to overcome it where viability is shown to be an issue. Fundamentally, the blockages are much broader than just looking at the affordable housing issue.

Simon Danczuk: You guys are the experts. You would have thought that somebody was in favour of the proposal in the Bill.

Q226 John Howell: Malcolm, you started by saying that the system is not broken, but then one of you went on to point to Stratford-on-Avon as a poor-performing

[John Howell]

district council. The system is broken, in that Stratford-on-Avon has been allowed to continue in this poor fashion for some time. I have had direct experience of it, and it is not a good council to work for. The quality of the planning is pretty poor. It is slow. There is no great change in behaviour and culture. If all the recommendations that you made over the years had worked, we would have a different Stratford-on-Avon.

Clause 1 is to ensure that councils that are failing can be picked up. Do you not agree that that is something that we should be aiming to do?

Malcolm Sharp: The answer to your last question is, of course, yes. I said that the system was not fundamentally broken. I went on to say that there were, of course, some poor-performing authorities. In my view, there were other things that needed to be done to assist those poor-performing authorities rather than necessarily just taking away their powers. Getting under the skin of that, there may be all sorts of reasons why those very few authorities—I genuinely believe that there are few authorities—are not actually performing. You would still be asking them to do some of the work on that planning application, but not getting the fees. We all know the resource problem that local authorities are facing at the moment, which is why I went on to say that if you are not careful, you might end up in a spiral of decline.

Q227 John Howell: But the simple fact is that that work has not been undertaken or if it has, it has totally failed in the case of Stratford-on-Avon. It simply is not working.

Malcolm Sharp: I do not know the particular circumstances of Stratford-on-Avon; it is not an authority I know very well. But yes, I fully acknowledge and I will not support any one-off examples of poor performing. My point is that it is not fundamentally broken across the board. Most planning authorities are working extremely well.

Q228 Mr Raynsford: All of you, I believe, have been involved in quite detailed discussion with Government on planning issues in the lead-up to the establishment of the NPPF, earlier this year. Can you tell the Committee what consultation and discussion you had with the Government about the provisions in clause 1, before it was announced that they were going to be introduced?

Dr Ellis: I will start with a quick answer. We had no detailed discussion with Government on the framing of clause 1.

Trudi Elliott: Nor did we, but it is fair to say that we have had lengthy discussions with Government around issues of performance and culture change, and our joint role in terms of collectively upping our game.

Vincent Haines: The Planning Officers Society, among other member bodies, attended a meeting with civil servants in CLG to discuss the matrix. We expressed our concerns around the matrix and the simplification of the process.

Q229 Mr Raynsford: Can you tell the Committee when you had that discussion?

Vincent Haines: In September.

Mr Raynsford: September this year?

Vincent Haines: Yes.

Mr Raynsford: Literally, a month before the Bill was announced.

Vincent Haines: Yes.

Q230 Mr Raynsford: Would you have expected, as professionals in the field, to be consulted about the mechanisms proposed to improve performance before they were introduced as part of legislation, normally?

Trudi Elliott: I think it depends, in that it has been made quite clear that there will be a consultation in relation to how this provision is implemented, which is why we have said it is difficult for us, as professionals, to assess what its impact will be. Our view is that the success of the provision will be if it is never actually used. One thing that we are looking at is how much resource and capacity is an issue, because we are all aware of the degree of cuts that local authorities have suffered. The Chartered Institute of Public Finance and Accounting evidence is that perhaps some services, such as planning and the built environment, have suffered a disproportionate cut.

We, along with POS and "Planning" magazine, are undertaking a survey at the moment to assess how much resource is or is not an issue. We do not know yet. We think that will help inform the discussion.

Dr Ellis: I should like to say, on our behalf, that from TCPA's perspective we have a lot of issues that we think planning should address. There is a positive agenda, I think, for legislation, but for us those issues were focused around delivery of large housing schemes rather than around public consent and legitimacy. They are focused around purpose. I suppose that in trying to be helpful, that is where we think the planning system should go next—addressing those three big themes.

Q231 Mr Raynsford: But as far as your experience of clause 1 is concerned—I do not want to get it wrong; it is right the Committee should hear this—you were not part of any prior consultation about how it would work and what the provisions would do to improve performance, essentially before it was announced.

Dr Ellis: Not in relation to clause 1, no.

Q232 Dr Coffey: There has been a lot of generalisation—broad brush things—saying, "If you do something quickly it means your quality goes down" and talking about examples of section 106 not being a blocker. I suggest you speak to NHS trusts, which are trying to develop property, and refusing to do any affordable housing as a consequence of that section. Frankly, given the number of stalled sites, is not the consequence of a lot of your logic that there would be no development, no regeneration and no community benefit at all?

Trudi Elliott: I think you have probably replayed what we said slightly disingenuously, if I might say so. We are all clear that we need to collectively work to unblock stalled sites—absolutely clear about that. We are saying that it is more complicated than section 106. A lot of them are big sites and hospitals will be among them. It is a range of other issues, particularly around highways, that are blocking the sites. We all collectively

have to work on this. In relation to the section 106 provision, there is probably a simpler way of doing it, because the provision in the Bill requires legislative change, which inevitably introduces delay.

Q233 Dr Coffey: You suggest I am being disingenuous. I am just replaying literally the words that you said, with broad generalisations as opposed to evidence. I am giving you one example: NHS trusts in Suffolk Coastal—absolutely no affordable housing, else the development will not go ahead, and you will not get your new health centre. That is the kind of thing that is happening. We are also being told that if you do something quickly, there are concerns about quality. What you are trying to suggest is really broad, as opposed to hard evidence of where a planning application that has gone through quickly is of poor quality. We have not heard that; we are just hearing some scare stories.

Trudi Elliott: What we are going to do in our evidence is give you case studies to illustrate where we are making a point, and I hope that will be helpful. Obviously it is difficult in an environment like this to come up with detailed examples, because it would take up the whole sitting. Our evidence will have examples to assist.

Q234 Mrs Mary Glindon (North Tyneside) (Lab): Clause 4 will introduce a limit on the information that local planning authorities can require to be submitted with a planning application. Can the panel say what effect that will have on the quality of planning control?

Malcolm Sharp: It is important that planning authorities have the right information up front. To use a specific, personal example—so that I am not accused of too many generalisations—we have a very big application, probably the biggest in the country, on our books at the moment; there are 2.5 million words in it. I want the planning application, but I do not want 2.5 million words.

I think we have reached a point where developers, particularly on large schemes, are trying to proof themselves against any possible challenge, and they are being advised to do so. We are in a position where we are getting too much information. We need the right information, but some agencies just ask for blanket information rather than being specific about the application.

The spirit is right, in the sense that we are getting into a bit of a bind in terms of the amount of information that lands on a planning assistant's desk. It needs to be a little bit more focused and succinct in order for us to be able to deal with the applications efficiently.

Trudi Elliott: We are broadly supportive of these provisions. What is required is the right information in a timely fashion. We urge the Minister to work with other Departments, because you will find that a lot of the requirements that are placed on applicants, or that cause applicants voluntarily to submit voluminous evidence, originate from provisions coming from other Departments and some of our European requirements. CLG needs to lead the way on this in relation to other Departments.

We have also seen that in some areas, some of the business-friendly planning charters that local authorities have worked on, particularly where they are doing it within their local enterprise partnerships, have proved very profitable. What can look like a challenging demand—the website says you need 40 things—but by working with the business community, if you have detailed discussions with applicants in advance of submitting an application, they can be much clearer about what is required. Walsall has done enormously good work on that, and we will give you some examples in our evidence. The business-friendly planning charters that LEPs are working on often address that very issue, because it is an issue that businesses and developers say is a challenge for them.

We think that there is an issue in terms of worry about judicial review. Often, developers are gold-plating applications, requiring everything bar the kitchen sink for fear that if you do not ask for something, somebody will try to base a judicial review on it. Regardless of how realistic that fear is, the fear factor is there. Again, I urge the Minister to work with the Ministry of Justice to see whether they can speed things up on judicial review, because if we got early determination of some of the less well-founded judicial reviews, a lot of the fear would go out of the system and some of that asking for more than is essential for fear of judicial review, and protection against it, would go.

Q235 John Glen (Salisbury) (Con): Mr Sharp, if a family is living in one of these very few poor-performing planning authorities and has been on the housing list for a very long time, how reassured will that family be to be told that their authority is one of very few?

Malcolm Sharp: As I said, I am not prepared to defend poor performance. Maybe not enough has been done, but my point is that I am not sure that this is the right way to get that working. That is the simple point I am making.

Q236 John Glen: But you would concede that in places where there has been sustained poor performance, it has an absolute impact on the outcome for that family in that community.

Malcolm Sharp: I would concede that planning is one of the factors. I do not know. We are talking about a hypothetical authority.

Q237 John Glen: We are talking about, say, Stratford, where there has been significant stalling for a significant amount of time and, as a consequence, many hard-working families on low incomes are not able to improve their lives.

Malcolm Sharp: If planning is a part of that, in that particular instance, then clearly, yes, you are correct. I am not denying that planning is a factor, but I suspect that there may be funding and all sorts of other issues about bringing housing forward, other than merely the planning issue. When you unlock a lot of this stuff, a lot of it tends to be much broader based, which is the point we were making earlier. That is not to condone poor performance, which I am not prepared to do.

Q238 Roberta Blackman-Woods: I want to pick up on a couple of points that Mr Raynsford was developing. First, I want to ask about consultation. In your opinion, would it be better for the Government to have consulted and got the views of planning professionals, local communities and others before coming up with clause 1? Would that not be a more normal process for policy development?

Dr Ellis: Full consultation is always a good idea, particularly on planning reform, partly because there are always unintended consequences. It is interesting, I think, that some of the most successful reform processes—the Government may wish to point to the NPPF—have been ones where there has been that dialogue, and that dialogue is useful. It is not threatening at all. We are all here to be as supportive as we can, to make sure that the English planning system works as effectively as it can.

It is also an issue of assembling the evidence, and that is a problem. We need to ensure that the framework is reformed on the basis of high principle but also great efficiency. Efficiency stems from having a clear evidence base. The difficulty with proceeding with clause 1 is that we genuinely cannot see the evidence base developing in the way that we would like, to be able to understand it.

We have talked about generalisations, so let me be specific and look at the impact assessment that was produced for the Bill. The Bill and the dialogue around it suggest that there are large scale costs around the planning service, but that is recorded on one page of the impact assessment. Nowhere in the impact assessment does it list or monetarise the benefits of the planning system. The benefits of the planning system that, in theory, we do not seem to want to talk about are enormous, both in terms of outcome, and monetarising environmental services, if that is the line you wish to go down, and in terms of process and governance.

The planning system, rightly or wrongly, is vested in the local governance of this nation. Many of the frustrations that people feel nationally are the result of people exercising democratic control locally, which we do not necessarily always sympathise with. All that means that there is a great and genuine willingness to get this right among every organisation the TCPA has spoken to, but that means taking a pause to make sure that we get it right in the best interests of both the economy and wider society.

Trudi Elliott: It could be that the Government wanted particularly to encourage elected members in local authorities to look at this issue and put the right resources and performance management frameworks in, because you usually find that where there's a political will in local authorities to sort things out, there's a way. That may be why it is in the Bill; the Government want the sector to put its house in order, rather than to have to use these fairly draconian powers. They may be hoping that the mere threat might address it in some places, but I think you would have to ask the Minister. We are hoping that the consultation on how you go about it addresses the issue of the so-what question, the quality question—"So what is the outcome in these places?" rather than just about what you can more easily measure. We also think that we could all do more around showcasing to authorities that are not performing well how some authorities have changed things in order to improve performance. There are lots of examples of how people have shifted things around.

Malcolm Sharp: I shall try not to repeat what has been said. I suppose one of the things that we are concerned about is that there is always a focus on the regulatory aspects. I am not denying how important they are, but as I said earlier, we have a system in place, and I want to emphasise the positive things, to enable local authorities to have a period of calm where we can get on and make sure that where local plans are not in place they jolly well ought to be, and for us to deal as efficiently as possible with getting planning applications through on the basis of the policies in those local plans. I could give you loads and loads of examples where planning is actually delivering; it is getting in before the regulatory bit, and planners are making the conditions right so that developers can come in with their planning applications and deliver growth. The disappointment for me is that we are focused so much on the regulatory part, rather than on getting the positive things working as quickly as we can.

Q239 Roberta Blackman-Woods: If work is already taking place on unblocking sites that have stalled, and if we know how to tackle poor performance in planning departments—whether it is being applied or not, because there seems to be some discussion about whether those methods are actually being applied—what is the purpose of clause 1, other than to threaten local authorities into a situation where they feel they must approve every single application, otherwise it might be overturned on appeal and they will pick up a negative metric?

Malcolm Sharp: I hope that is not the case. We are already approving 89% or 90% of all applications, and trust me, you would not want the other 10%; they probably do not have the right information, or they are simply poor applications, which, with all the will in the world, one has not been able to make appropriate.

Q240 Roberta Blackman-Woods: But my question is whether clause 1 is now delivering a risk that totally inappropriate developments will be approved simply because local authorities are worried that their decisions will be overturned on appeal.

Malcolm Sharp: In fairness, you have to take this in proportion. As I understand it, clause 1 and the sorts of metrics that might be used will focus on very, very few authorities, so I don't think it will affect the vast majority. If there is a danger, it is a danger in a very small area.

Trudi Elliott: I don't think that is the risk, actually. If you look at those authorities that have a lot of decisions overturned on appeal, this provision, or something similar, might assist them in properly addressing the issues and the recommendations that they receive, and in ensuring that their decisions are in accordance with their own policies and with national policy. I do not think there is a risk of a lot more things being approved that shouldn't be approved. It may mean that some things that are subsequently approved on appeal get better consideration in the first instance. That surely must be the objective, because it is always better for the right decision to be made in the first instance, not only because it speeds the process up but because the local community feels that its elected representatives have made the decision, and they are always more comfortable about that than if the decision is made on appeal. It is much better if it is made at the first available opportunity on the evidence before it.

Dr Ellis: I support that. I think the real risk is about consent and trust in the planning system. Those are the real principles that we should address. Whether or not the Government mean it—I am sure they do not—this measure, and particularly clause 21, sends a message to communities that they are no longer critically involved in determining decisions that affect them. That is where

the real risk lies in clause 21—the perception about whether the planning system is accountable to local people or not.

Q241 Andrew Stunell (Hazel Grove) (LD): Perhaps one of the toughest requirements of the NPPF was the need to have a local plan in place. A consequence of that has been a huge rush to complete local plans, which in many cases have been outstanding for years and years. Is not clause 1, in essence, doing the same job in relation to Departments' performance on planning applications?

Dr Ellis: I will have a go at that. It is a good question, because it is to do with principle. I think clause 1 is different from the approach in the NPPF, which as you rightly say clearly stipulates that we should get on with local plans. There is no excuse for a delay in the preparation of local plans, and encouraging local authorities and the democratic institutions behind those local authorities to get on with planning is laudable.

Clause 1 is a much more significant measure in principle in relation to the basic architecture of the planning system, because it takes the decision in the first instance away from a local authority. There are plenty of examples of the Secretary of State taking away decisions further down the decision-making process, but not in the first instance. I recognise that that is genuinely heavily qualified, and that it will be used in extremis, but it is a very different measure, and as a result it will run the risk that I identified of communities feeling that their role in government is no longer significant in those local authorities that are not designated.

Malcolm Sharp: In a way, the local plan was a harder hill to climb, and we seem to have done that positively rather than negatively, by enabling and encouraging local authorities to bring their local plans forward rather than, as has just been said, taking powers away. I do not think the last Act helped very much, because it made it quite complicated, but you can bring local plans forward and the vast majority of local planning authorities are bringing them forward.

Q242 Andrew Stunell: It might be worth rehearsing the evidence that your organisations gave when the Localism Act 2011 and the NPPF were going through on your fears about the imposition of local plans and the consequences of not having a local plan. It seems that the evidence you are giving now about clause 1 is very similar to the evidence you were giving then about the requirement for a local plan. I am just asking you whether there is any genuine difference between having an NPPF that says if you have no local plan all hell will break loose and clause 1, which says that if you are an underperforming authority the Secretary of State may step in.

Trudi Elliott: I think the Government are adopting a consistent approach. The Government's clear objective here is to try to persuade people to do things before they introduce a punitive measure.

Q243 Andrew Stunell: Could I move on to my second area of questioning?

The Chair: Which is?

Andrew Stunell: It relates to the viability and phasing point that Trudi Elliott raised.

The Chair: Let me go to Paul Blomfield, who wants to follow on from what we have just been discussing. I will then give you the opportunity to introduce that subject.

Q244 Paul Blomfield (Sheffield Central) (Lab): I want to pursue Roberta's line of questioning on clause 1. We are getting a picture that clause 1, in your view, is not based on any evidence that would lead us to believe that it will effectively address the issues of concern. I am conscious that Dr Ellis said a little while ago that he was worried about unintended consequences, and I think someone said earlier that concerns had been expressed that the clause would lead to perverse outcomes if we narrowed an assessment of performance against two such limited criteria.

Could you all reflect on what perverse outcomes or unintended consequences you think there might be?

Dr Ellis: I will repeat the point I tried to make before. The measures in clauses 1 and 21 move consent from local to national; what they do not do is deal with the detail of delivery. In the past 18 months, as an organisation we have written a lot about how to get things moving on the ground through a set of detailed interventions.

In my mind, the prime cause of unintended consequences—yes, it undeniably has an impact on local authorities, and it draws the decision up into the centre, which provides an opportunity to control time scales through the Planning Inspectorate—is that you cannot rebuild this nation without consent. You have to persuade, and sometimes even educate, communities about the importance of great, fantastic outcomes from planning. But imposing them on communities is not going to stand, and I do not believe it would even support economic development because what the 1980s proved more than anything was that, where people fundamentally fall out with the planning system, they simply protest. It is absolutely vital that people retain faith and trust in the planning process as a way of securing the nation's long-term progress. That is the heart of the unintended consequences that we are worried about.

Malcolm Sharp: I was looking more at the internal consequences for the local authorities, to balance that broader picture. Certainly, I am concerned about the health of some planning departments where the most senior planner is actually quite junior. We were talking to our colleagues in the Royal Town Planning Institute and at *Planning* magazine about finding out a little more about that. There is a spiral if fees are taken away, you still have to do lots of work and you do not have a very strong department. The consequences are perverse in the sense that you are going to get into a worse position, rather than a better one. That is the point I was making about unintended consequences.

Vincent Haines: I point to those authorities that are perhaps performing just above whatever target is set. They will be very much focused on making sure that they do not fall into the danger area and lose their powers. Rather than sit down and negotiate with developers that have not entered the pre-application process and have not entered a planning performance agreement, they might sit down with them and make a decision that they consider to be sound when they could have taken a little more time and agreed an extension of time with the applicant to spend a few more weeks and get a satisfactory outcome. That does no good for anyone: it does not help the economy and it causes more delay.

Trudi Elliott: I have members in both the public sector and the private sector, so for us success is if those provisions never have to be used and if any required behavioural change is triggered by this debate, rather than by the use of the provisions. I have not used the phrase "unintended consequences," but you will not be surprised that my fear is of an increase in the use of judicial review.

Q245 Bob Blackman (Harrow East) (Con): Can I be clear about your definition of a poorly performing planning authority? We have had hints about that, but what would be your definition?

Malcolm Sharp: Clearly, appropriate speed has to be one, although it may be that taking a bit longer in the way just described is the right thing to do for the development and for the developer, rather than rush a refusal or set the wrong conditions. I certainly welcome the idea of planning performance agreements in which you can sensibly sit down with a developer. The one I talked about earlier is a huge development, so it is absolutely impossible and the developer would not want us to deal with that in 13 weeks, but, equally, he or she needs to know when they are going to get appropriate permission and factor in what resources are needed to get there. Speed, yes.

As for appeal decisions, that is the more tricky one. In some authorities, you might only get one, two or three majors—it is said that it would be measured only on majors—and you could get some perverse percentages if you were not careful in dealing with that. The customer experience is very important. I am really pleased to say that one of my customers recently told the Secretary of State to his face, "You'll have no complaints from this planning authority." I took a lot of heart from that.

Q246 Bob Blackman: By customer, you mean developer.

Malcolm Sharp: Yes, in that instance, but the customer for planning is of course broader. That is the nub of where we are at, because we are always balancing the views of a particular developer against the views of the local community. That is what planning is all about. It is, obviously, very tricky to measure whether you have that balance right. Customer experience is part of that.

Finally, what was delivered? If an area needs housing, a hospital or whatever, has the planning authority—through all its processes, not only planning decisions—efficiently managed to deal with and deliver it?

Trudi Elliott: I would rather focus on what a good planning authority looks like, if I may. A good planning authority has clear political and managerial leadership; it knows what it is trying to do for its community—there is a vision—and that is translated into its up-to-date local plan; it has adequate resources; it has politicians who are prepared to make hard decisions; it has qualified planners working in the planning department at the right level; it actively engages its community and helps the community address the challenges of the hard decisions it has to make; and it thinks about the long-term, not the short-term.

Q247 Bob Blackman: How concerned are you that the number of major planning applications—that is, nine units plus—being approved in the 13-week period has nosedived to 57% in the past year?

Trudi Elliott: We are concerned, and that is one of the reasons why, with "Planning" magazine and the Planning Officers Society, we have undertaken a survey of resources. We want to know how much of that is due to—from the evidence we have seen through CIPFA—the fact that planning departments have taken a bigger hit than other departments in local authorities and how much of that is other issues. It is a recent development. We also need to get under the surface of that. Why is it happening? How much of it is the performance of the local authority and how much is other factors? It is clearly an area of concern, unless I discovered that things were taking slightly longer and then getting built quicker, because then I would feel better about it. It is enough of a trigger for us to be concerned.

Ian Murray (Edinburgh South) (Lab): What in your professional view is the current public perception of planning? What could the consequence of that public perception be if clause 1 was implemented and if the large-scale development of residential projects was taken into the national policy framework?

Dr Ellis: There is a very mixed view of planning. I say again, our greatest concern is not legislation but that relationship. This nation used to build 400,000 units of housing a year through a planning system. The reason was that there was greater political consensus about the need for that kind of growth, and the relationship between planning was of course different. The concern is that rebuilding trust is hard work. It requires planners to have community development skills and it requires them to work with communities hard on regeneration. It requires them to have the planning department that Trudi has just set out.

Trust is hard to recreate, but easy to damage. The reason why I am worried about clause 21, along with clause 1, is that the effect of clause 21 is to draw up into the major infrastructure regime a very broad—as defined in the impact assessment document—range of town and country planning matters. Speaking as someone who has done a bit of minerals planning, there is no problem, for example, with the minerals planning regime in England. It is an effective regime. It does not need to be drawn out of town and country planning, but it is a controversial regime in some areas. Given its controversy, it works remarkably well. Whether that is the intention or not, I worry whether a message is being sent that drawing to the centre critical decisions is somehow a way of dealing with the long-standing problem on the ground. For me, it would be about a different, perhaps positive, attempt to rebuild that relationship with communities.

Q248 Andrew Stunell: I shall pick up the points to which I alluded before. Viability versus phasing—it is quite a seductive argument that maybe we are picking the wrong test, viability, and that it might be phasing. But the word trust has just come into the conversation, and I think many local members of planning committees and so on would have quite a lot of concerns if the way of solving the problem were to be to say to developers that they can build the big, expensive houses first and do the roads, schools and affordable housing second. Companies go bust, they change their plans and things alter. I am not sure that is quite as strong a line of discussion as you put to us.

I am really interested to understand whether you think there is a problem that is not being addressed or there is not a problem, and how we would actually steer our way through that in order to finish up at the end of the day with more homes built in as short a time as possible.

Trudi Elliott: There is a problem. We have sites that are not being built because of viability. I won't repeat what Hugh said about how we got to where we are, but we are in a new economic environment. We need to face up to it, and we still need the housing. My point on affordable housing is that it is a problem and we need to address it, but the need for affordable housing has not gone away. The benefits of mixed communities have not gone away, so I would be looking at whether there were ways in which we could support developers with financial contributions, phasing or any other option that get these developments going with the affordable housing. That is the perfect scenario for me, and that is why I think that partly the exam question is wrong. It should not be, "How do we get rid of the affordable housing requirement?" It is, "How do we get these developments going now, with affordable housing?" That would be my perfect solution.

Phasing is not the answer. It is just one opportunity. Discussing matters with the director of planning and regeneration in Birmingham, I certainly know that they have managed to get some sites going with a changed phasing arrangement so that the developers get going and then make their contribution to the council later, once they have the cash flow going. The Bill is helpful in a number of ways. I am depressed really that we have focused entirely on clause 1, when there are other provisions, particularly around special parliamentary procedure or the Penfold stuff, where it could make a difference.

The real challenge that developers are facing at the moment is the demand side. It is the financing. It is the cash flow. We have to look at this in the round. There will not always be a planning solution to some financial challenges. We need to look at the financial solutions and the planning solutions simultaneously. That will really make a difference now, as opposed to in the longer term. Some of the provisions will deliver in the longer term, but not immediately and we have some immediate challenges.

Malcolm Sharp: I want to give you one example to put some more trust back into dealing with phasing. It is the Cambridge southern fringe. The Cambridge area is massively developing and its growth area money was used in order to loan money to build the southern relief road, which opened up the site. That money—there is an agreement with the development as it goes forward—will be passed back and then recycled into unblocking something else, so fiscal things can happen and can help the phasing of such developments and unlock them.

Vincent Haines: Over the years I have been involved in a number of major projects for housing delivery and other projects. One of the things that strikes me is that quite often the delay is while the land assembly occurs. You get fragmented ownership and various developers competing with one another for sites. Also, there are currently many landowners with high expectations of land values, which they were given many years ago, and they still hang on to those. It is those sorts of sites that I find are stalling, because you cannot get the developers and the landowners to work together—they quite often work diametrically—and we end up with development not coming forward on those sites.

Q249 Mr Raynsford: Dr Ellis has twice drawn our attention to clause 21 and I want to bring the discussion round to that clause. Could the panel tell the Committee what they feel about the likely impact of clause 21? We have already heard Dr Ellis's fears about the removal of decision making from local democratically elected bodies. In particular, may we have a response on how easy it will be to define schemes of national significance? Secondly, what will be the potential impact on out-of-town as against town centre development decisions?

Q250 The Chair: Before the witnesses answer, may I draw their attention to the fact that we have four minutes left, which divides nicely between four people?

Trudi Elliott: If this provision is going to work, there would need to be a national policy statement that gives some clarity around it. We think there is a potential risk here, because housing is excluded from it and then you do not get mixed-used developments. That might then prejudice mixed-use developments. A lot of the very big ones are mixed-use. Our other fear is the risk of judicial review, but with the right caveats it might be beneficial. We could not assess whether it would speed things up.

Dr Ellis: Our concern is that the 2008 Act was not intended to deal with complex social and economic development embedded in communities. It was designed for hard kit under the four categories that the 2008 system sets out. The list of infrastructure defined on page 68 of the impact assessment is very extensive. We entirely support the idea that you must have a national policy statement for that form of development. We support it for two reasons. First, the entire lesson of terminal 5 was that if you want an inquiry to move quickly, you must establish Government policy at the national level. Without an NPS, the 2008 Act would have to allow debate on all issues of policy at the examination, which would be a challenge for it. It is not how the 2008 Act is meant to work. Also, without an NPS, Parliament has no opportunity to comment on the purpose of the development.

So, our view is that we are concerned. First, is there a real issue with these forms of development under the current system? Secondly, would it take time? Thirdly, without an NPS, it creates a series of problems both in evidence and in accountability to Parliament.

Malcolm Sharp: I echo all of the above, and there is no evidence that it will be quicker to deal with complex schemes. I take your point about kit. That is where planning really got into trouble in terms of the big schemes like Heathrow. Terminal 5 gave planning a bad name. Generally, in my view, the normal development of an industrial estate or a mixed-use community is something we can handle properly under the existing system.

The Chair: Order. I am afraid that brings us to the end of the time allotted to the Committee to ask questions. I thank the witnesses on behalf of the Committee for the thoughtful and detailed way in which they have answered some very probing questions.

Examination of Witnesses

Robbie Owen, Angela Knight and Pamela Learmonth gave evidence.

10.30 am

The Chair: For the record, please will the new witnesses introduce themselves?

Angela Knight: Angela Knight, chief executive of Energy UK.

Robbie Owen: Robbie Owen, secretary of the National Infrastructure Planning Association.

Pamela Learmonth: Pamela Learmonth, chief executive of the broadband stakeholder group.

The Chair: Thank you.

Q251 Roberta Blackman-Woods: I welcome the panel members. I will start by asking for your opinions about the consequences of implementing clause 21, which is about bringing commercial and business into the national infrastructure policy.

Robbie Owen: We believe that clause 21 could be beneficial for the right sort of projects, because the Planning Act 2008 regime is beginning to work well and a number of cases are now coming through under it. The regime's ability to deal with complex projects within, to a large extent, a fixed time scale are two benefits that could be applied to the right projects that otherwise would be considered under the Town and Country Planning Act 1990 regime. The impact assessment published last week makes some fair points here. In relation to complex projects, perhaps spanning more than one local planning authority, and where there is a risk of delays by appeals and call-ins, we consider that the 2008 Act regime could be beneficial.

Angela Knight: To add to what has been said, we are concerned about one issue to do with the clause, while supporting the generality of the clause. As it is drafted, there could be an out-of-town business park with, say, an associated combined heat and power but they cannot be considered together. It is important that there is holistic consideration of some schemes. It may not be the intention of the Bill, but the way that the clause is drafted results in an infrastructure project and a commercial project not being considered together. We urge that they are considered together.

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

Pamela Learmonth: As per the prior information that we submitted to the Committee, our principle interest is in clause 7. If there are any particular questions about other clauses that you would feel interested in our answering, as broadband providers, we can come back to that. But that is where our focus is on the Bill.

Q252 Roberta Blackman-Woods: Okay. Can I just pick up on a point made by Mr Owen? I was struck by your saying, "the right sort of projects". Some of us are struggling with what the right project might have to be to be caught under the clause, and particularly what the threshold might be to move something from local to national determination. Can you help the Committee by saying what might be appropriate?

Robbie Owen: There are probably two issues here. First, we have heard from the Minister that a consultation exercise is due to be held on the terms of a draft statutory instrument, setting out the types of development. Certainly, based on the Planning Act experience, we do not think it should be that difficult to set out the types of development with the size, thresholds and descriptions as was done in the Planning Act. It may then need to be changed. That has already happened in the context of the Planning Act. Some of those thresholds have been changed, and more have been proposed to be changed. However, we do not think it is impossible to do. I entirely support the point that there is the rather odd exclusion of dwelling houses, as the Bill makes clear, which would rule out any mixed-use schemes from the scope of the Bill. We do not understand the logic of that.

Secondly, it is important to leave a degree of flexibility so that when developers approach Government and say, "We have this particular scheme," it is caught by the prescribing regulations. The Government can then say, "We consider it to be of national significance. Would you please designate it so we can go down the Planning Act route?" The way in which the designation process works needs more attention in terms of how the Bill is drafted. At the moment, the sole criterion is whether the scheme is of national significance. We should consider whether it is right that that is the only criterion, or whether other issues should be taken into account by the Secretary of State, such as complexity, whether there is more than one local authority or whether there is a time urgency. That, together with the classes of development that you prescribed to make these schemes eligible in the first place, should provide a way to determine which are the right schemes to send down the process.

It is important to distinguish between the Planning Act, where, if you are caught, you are caught and you have no choice but to go down the Planning Act route for national infrastructure, and this proposal, which will give developers a choice. If they, in consultation with the local authority, think it is important and appropriate for their scheme to go down this route, they can go to the relevant Government Department and seek to persuade them and ultimately the Secretary of State of that. However, it is not compulsory.

Q253 Dr Coffey: May I speak to Mrs Learmonth? Some groups claim that the provision in clause 7 will harm rural landscapes and impact tourism. Are their concerns justified?

Pamela Learmonth: As the Committee will know, unfortunately the consultation against clause 7 has not yet been published by the Department for Culture, Media and Sport. When we see those full proposals, we and the companies and organisations we work with will comment in full detail. However, our understanding is that clause 7 will make it easier for the Government to install broadband street cabinets and overhead broadband lines. The companies we work with have absolutely no interest in placing cables or street cabinets in areas that are not supported by the associated local areas. However, we understand that in taking forward these proposals, there will be an associated code of practice and there will still be a notification window of 28 days. The broadband stakeholder group and companies we work with are supportive of that.

We do not see this as a planning free-for-all—that is certainly not what we are calling for—but we think that these measures are necessary because the current regime results in a delay by process. As such, if we can liberalise the regime and develop a feasible code of practice alongside this, we think that will help both speed and efficiency of broadband roll-out. It will also work for local communities and ensure that infrastructure is sensitively placed and does not obstruct or denigrate conservation areas or national parks.

Q254 Dr Coffey: What is the cost to communities of delayed or blocked applications?

Pamela Learmonth: As the Committee will know—

Dr Coffey: Do not assume we know.

Pamela Learmonth: The Government are behind the roll-out of superfast broadband to areas where the market is not reaching at the moment. That is the intention behind the Government's public investment programme and the BDUK roll-out programme. Hopefully, that will get under way shortly, once the final state aid issues have been resolved. We all have an interest in getting that out as quickly as possible. The companies that win those contracts want to deliver that in line with the Government's 2015 target. But there is an issue at the moment. There can be inconsistencies between local authorities. BT has said that some 2,500 cabinets have been taken out of their programmes as a result of the current planning regime. If we are keen to get this infrastructure out to communities that are crying out for that connectivity and are lobbying their MPs and the Government to do so, we think that the changes can make a real impact on the ground and ensure that the connectivity gets out there as efficiently as possible. At the moment, there can be some inconsistency between planning authorities. We have some anecdotal evidence of people being asked for fees even just to meet local authorities to discuss where cabinets are to be sited. These sorts of things will naturally get in the way of an efficient and quick roll-out.

As I said, we still need to see the details from the DCMS consultation, but we are very much behind the intention of this. We think this is exactly the sort of thing that the Government should be doing to help the private sector invest more quickly. We think this can make a real difference on the ground. The industry is committed to working with other stakeholders around a code of practice to assuage some of the concerns that have been voiced about whether this is a planning free-for-all, or whether it will lead to infrastructure being sited in areas that local inhabitants do not wish it to be. That is not what we want. We need more certainty around planning regimes so that we can get on and deliver the connectivity that the Government and your constituents want the industry to do.

Q255 Dr Coffey: There has been a lot of talk about how everything could be put underground. I understand why people would say that about optic fibre and similar. One of the benefits of 4G surely must be mobile broadband, which, in my constituency, I would consider will be absolutely critical. Do you have concerns that there are barriers to more infrastructure above ground at the moment, which this legislation can help with?

Pamela Learmonth: As we understand it, the consultation that will come out from DCMS that will say what it will use clause 7 to do will relate only to the siting of broadband street cabinets and overhead lines. Other elements that are important in terms of mobile infrastructure, we do not understand are being taken forward under clause 7, but will be taken forward by other means. With EE just announcing 4G, it is starting out with 16 cities and will move from there. We are very much looking at that fixed in quite a lot of ways, in terms of getting fixed connectivity out. I think there is a job to be done in ensuring that planning does not get in the way of more rural areas getting 4G when that is deployed.

In terms of the two elements we understand that clause 7 will do—broadband street cabinets and overhead lines—Virgin Media did a trial in Berkshire with overhead lines. It found that it was very cost-effective and seemed to work well with the consumers they were working with. But in that instance, they were able to agree terms with private land and triallists. They did not have to go through the planning regimes to do it. There is potential for overhead to be used, which should get connectivity out at a much cheaper rate. Again, some sort of planning barriers have got in the way of that. In that instance, if clause 7 was used to drop the planning permission need for overhead—obviously still with an associated code of practice to offer safeguards—that could be a positive development in allowing the private sector to innovate with new ways of deploying infrastructure. It can do it on a more commercially viable basis, and it gives end users more opportunity to receive connectivity.

Q256 Roberta Blackman-Woods: Can I have a quick follow-up? I am interested that you keep talking about planning barriers. I wonder whether the local community would ever think of these as legitimate concerns about what cabinets might look like. After all, we are talking about very environmentally sensitive areas. Would you accept that there should be better ways of negotiating with local communities on what is appropriate for areas of outstanding natural beauty or national parks? Would you accept that clause 7, as it is written, will not limit itself to broadband?

Pamela Learmonth: First, in terms of when we are saying there are planning restrictions, obviously if there is a genuine case of viable opposition to the siting of a street cabinet, and that is very much coming from the local community, that is something that BT and others will want to listen to. We are not calling for a planning free-for-all here; and, as we understand it, in the consultation that will come out there will be safeguards applied to this, so there will still be a 28-day notification requirement around street cabinets, and also the development of a code of practice, I think, similar to the format of what already exists in terms of the siting of mobile masts.

So we are not calling for a planning free-for-all. That is not to say that industry cannot make mistakes and propose something that might not work; so we are not calling for that. What we are saying is that in experience so far there has been a lack of consistency in applying planning principles between planning officers; there has been a lack of consultation from a local authority before it rejects an application—decision making taken to the absolute deadline. These are real issues that the industry is facing, and they need more certainty to be

able to plan for confidence. We are not asking for that. We just think that clause 7 does allow for much improvement to the current regime.

I think it is also worth pointing out that when we are talking about the extension of removal of prior approval into an extended piece of area, this all relates to what we would call the final third deployments, so hopefully there is already synergy there, in terms of local authorities making their broadband plans; they are the people that are leading their bids to, in the UK, roll out superfast broadband in their communities. We would hope that there is already buy-in there, of rolling out that infrastructure, and obviously they are the experts; they will know the concerns of those living in the local area. So we are hoping that, actually, this is just very much tying into what is already there in terms of local authorities leading the way in developing their own broadband plans, and then working effectively with industry that will come to deliver that.

Your final question was do I think that clause 7—

Q257 Roberta Blackman-Woods: As it is written, it does not limit itself to broadband; it includes electronic communications.

Pamela Learmonth: Our understanding of that is, that is the way that it has to be drafted to ensure technology neutrality—to be specific around which part of electronic communications there, is not something that is feasible in legal drafting. However, we understand that, as I said, once associated consultation is issued by Government, which we are eagerly waiting for—I am more than happy to come back to the Committee once we have seen it—it will make clear their intention of how to use that in relation to this specific clause. I would hope that would offer you clarification and assurances that what clause 7 is aimed to do is to make the siting of broadband street cabinets easier to do—and deployment of overhead lines.

I also understand it is going to be a sunset clause that will run for five years from 2013, so I think this is very much focused on trying to facilitate roll-out of superfast broadband in the next five years and allowing industry to get on and deliver that connectivity that we are always being lobbied to deliver, but with associated safeguards in terms of code of practice and 28-day notification windows, too.

Q258 Simon Danczuk: Miss Knight, your members generate more than 90% of UK electricity and supply up to 26 million homes, I am given to understand. I am particularly interested in clause 22, "Postponement of compilation of rating lists to 2017". I am also interested in your letter to the Secretary of State for Communities and Local Government, and to the Business, Innovation and Skills Minister, who joins us this morning. You wrote on 29 October:

> "Government policy and regulatory certainty is crucial. The decision to postpone appears to have been made without consultation and is likely to have an adverse impact on many of our members…there is a risk of plant closure. High business rates may well lead to higher wholesale prices, which will ultimately be passed through to business and residential customers. This will not be welcomed at a time when household budgets are already squeezed…We would urge that this matter is reconsidered".

You conclude by saying that you would welcome the opportunity to discuss this issue. Have the Ministers come forward and discussed the matter with you?

Angela Knight: A discussion took place between officials and representatives of Energy UK yesterday, and I have also received a holding letter from the Minister. It is a matter that is pertinent to some, but not all, of the power stations in the country, as I think that I made clear. The concern relates particularly to some of the older stations, where the situation now is rather different from the last valuation. At the same time, I recognise that these things are quite complicated. Business valuations and ratings usually have a number of interconnecting parts, so we look forward to continuing the discussion on these issues.

Q259 Simon Danczuk: But three weeks on from writing that letter, you are still of the view that the Government's decision to postpone revaluation of business rates is going to lead to an increase in electricity bills for people out there.

Angela Knight: Not necessarily.

Q260 Simon Danczuk: You have changed your view?

Angela Knight: No. The discussion that took place yesterday between officials and representatives of Energy UK was, I gather, informative. I have not had a full report back from that, and we will have to look at some of the calculations again. There are still, therefore, concerns on the table, but I cannot give a conclusion as to where we are at this stage. I am quite happy to write to you when the discussions have concluded.

Q261 Simon Danczuk: You said in your letter that the proposed break in precedent has the potential to lead to less certainty at a time when that is important to business. The Government are claiming that the postponement of business rate revaluation is providing certainty; your letter clearly states that it is providing uncertainty. Which is it?

Angela Knight: There was an anticipation that a revaluation would be taking place, and the assumptions that a number of entities had plugged in was that, if the revaluation was undertaken in the same way as the previous one, it would result in a lower bill for themselves. That is, of course, important for all industry. I cannot yet give you confirmation—yes or no—on whether the discussions that have now taken place between officials confirm that. As soon as we know the outcome of those discussions, I will of course write to you and the Committee with pleasure.

Q262 Simon Danczuk: Just briefly and finally, is there still a risk of plant closure?

Angela Knight: I think that there is a risk of plant closure for a number of reasons, not least a series of further directives that are coming in from Europe that apply to some plants. We have to recognise that. There are a number of reasons that we require certainty as far as the energy industry is concerned, and predominantly they relate to the significant investment required in this area. Planning is a part of that, but by no means the whole story.

Q263 Dr Coffey: I think that the public will be surprised to learn that you believe the value of energy networks and power stations has fallen by more than average when their bills are shooting through the roof. Can you explain why you think your business rates would fall?

Angela Knight: Yes. As you know, there is of course a significant difference between the economy now and the economy when the previous rating took place. Demand is therefore down, and that relates back into the method by which power stations are valued for the purposes of rating valuation. Because there is an activity element and quite a significant amount of documentation that supports it, whereas the anticipation was that some power stations, particularly the older ones, would get a reduction in their business rates, the concern is that that is no longer going to take place. As I think that you are well aware, much of the debate around energy, which is clearly very important for all our customers, both individuals and businesses, is a strong and important one. A lot of the price of energy relates to what is happening in world prices, so it is outside the control of the UK.

Q264 Mr Raynsford: Can I bring the panel back to clause 21 and raise four specific issues? First, on the definition, could you give us your view on how to best define which projects should be treated as of national significance and brought within the regime? Secondly, on exclusions and separate regimes, which you have already alluded to, there is the exclusion of housing, which would compromise mixed-use developments and the separate regime where there is an energy component. Thirdly, there is the need for national policy statements, which was very much stressed by Dr Ellis from the Town and Country Planning Association in his earlier evidence, which you may have heard. Do you agree with that? If there is not a national policy statement, how can the inquiry be limited, as it should be under the 2008 Act regime? Fourthly, could you give any views that you may have on how this will impact on the implementation of policy in relation to town centre as against out-of-town development. Sorry, that is a very big range. I thought that it was better to give you the questions and let you come back, rather than do follow-ups.

The Chair: Four questions. I do not know who wants to make a start.

Angela Knight: Well, I can, but I suggest I pass to Robbie Owen to start, because our piece of this is only very small and relates to energy. I suggest that I pass to the gentlemen on my left, who will be able to give the broad answers.

Robbie Owen: Before I answer, could I ask Mr Raynsford to elaborate on the second question? I did not entirely understand the second question about exclusions to the separate regimes.

Q265 Mr Raynsford: This was the point that Angela Knight made, which was that where there was an energy component, there would be the likelihood of a separate regime.

Robbie Owen: Thank you. Let me take those four questions in turn and, I hope, answer them comprehensively.

First, in terms of how and where those schemes that could go under the Planning Act by virtue of clause 21 could be defined, there are two stages here. First, the intention is that those projects that will be eligible to be considered to go under the 2008 Act regime would be set out in a statutory instrument. The Government have committed to prepare a draft and consult on that. I do not see a difficulty in terms of setting out in the draft statutory instrument the kind of projects that will be covered and their size, nature, description and purpose, just as the Planning Act does at the moment in relation to the types of energy, transport, water and waste infrastructure that it covers.

That is the first step, but secondly, you have to go through the stage of applying to the Secretary of State for a designation, if the Secretary of State considers that your project is—albeit one within that list in the statutory instrument—of national significance. It is a two-stage process. The first stage is the statutory instrument and the second is the judgment by the relevant Secretary of State as to whether your scheme is of national significance. As I remarked earlier, whether that is the right and only test is a matter that the Committee will no doubt want to consider, because there may be other criteria, such as complexity when more than one local authority is involved.

On the second question, which is on exclusions, first, I do not immediately understand why the current exclusion in the Bill in relation to dwellings is there, especially if mixed-use schemes are intended to be covered, because mixed-use schemes will always include housing, whether it is affordable or otherwise. That merits further consideration. It may be that the Bill might be better expressed to be something where you cannot prescribe under the SI a project that consists wholly or mainly of dwellings, but to rule out any project that includes even one dwelling seems a bit extreme in my view.

Secondly, I do not immediately understand why separate regimes apply to energy, because the huge benefit of the Planning Act regime and those projects sent down that route under this process is that that regime is—not entirely, but by and large—a one-stop shop. Therefore, you can wrap up in it all of the other separate consents you would normally need, so would not need separate consents. It may be that I have not fully understood that point, but that would be my response.

Q266 Mr Raynsford: Maybe Angela Knight would like to clarify the evidence that she gave earlier, which gave a slightly different impression.

Angela Knight: Yes, I can with pleasure. It may well be that the Bill, as it is written, does not have this intention. In clause 21, where we support the way and thrust that that clause is drawn of bringing business and commercial projects together, as we understand it, the Government perceive that a project is of national significance on its own or in combination with projects of the same kind, although an infrastructure project and a commercial project cannot be considered together even though they are linked. That effectively means that you have a project that is linked, but you end up without being able to consider them together.

So often, if I can speak from a personal viewpoint, seeing things together and thinking about them together is vital. There is something about that necessity as well as a clear process and procedural issue, which makes common sense, and that that which makes up the project is considered together from a planning perspective rather than in individual chunks.

Robbie Owen: I think that that is a fair point, and it goes to the detailed drafting of clause 21. It would be beneficial to make it more flexible in terms of who can make a "qualifying request"—the language that is used—so that you could cater for the situation that Angela Knight is concerned about.

I turn now to your third and fourth questions on policy. It is perfectly true that one of the main planks of the 2008 Act regime was to take policy out of the process by having policy set in advance by Ministers through a series of national policy statements, now, as we know, under the Localism Act 2011, approved by Parliament as opposed to Parliament just being consulted on them. The idea behind that was that we could then avoid debates on the national need for a certain type of infrastructure when we came to promoting particular schemes through the Planning Act process. That said, the Planning Act anticipates that there might be cases when decisions come to be made under the process and when there is no national policy statement in effect. In that situation, the legislation obliges the Secretary of State, as the decision maker on the individual scheme, to have regard to a list of other things, particularly any other matters that the Secretary of States thinks are both important and relevant to the decision.

It is worth noting, in fact, that the first two decisions that have come out of the new process following the abolition of the Infrastructure Planning Commission to schemes for Network Rail were both made in the absence of any national network or policy statement, so the system has already been shown to be one that can work in the absence of a national policy statement. In that case, we have to ask whether we need a national policy statement for clause 21 to work effectively. The answer to that really depends on what type of development is it intended for clause 21 to deal with, because the list at the moment is quite broad. We have seen in the impact assessment and when the Minister gave evidence to the Select Committee in October that, when that list is confirmed in a draft SI, we will be better able to take a view whether, in fact, it would be pretty difficult to take schemes through the Planning Act process without a national policy statement.

At one extreme, we are looking at a broad category of commercial mixed development, and it is hard to contemplate how the Government could sensibly produce a national policy statement on that wide variety of schemes, whereas, for example, if it were more focused on research and development, big business parks or mineral extraction, it would be easier to contemplate a national policy statement that dealt with those issues.

The impact on town and city policy should be taken care of, because the national planning policy framework is certainly something that can be taken into account when making a decision under the 2008 Act, under the reference that I mentioned earlier of anything that is both important and relevant. Were there to be no NPS for a particular scheme that was going through under the 2008 Act because of clause 21, what the NPPF had to say on the matter would be relevant and important, taken into account and could certainly be used to maintain the town and centre first policy.

Q267 Mr Raynsford: Can I pursue that? Given the controversial nature of many such developments—I am thinking particularly of out-of-town developments—which might be seen to be undermining the viability of the local town centre, what do you think is the likelihood of judicial review, because of the number of uncertainties, which, in a sense, you have alluded to in your evidence and which have come out in our earlier discussion?

Robbie Owen: The spectre of judicial review is perhaps used a bit too often as a reason not to do things. Yesterday's announcements were interesting and relevant in this respect. So far as planning judicial reviews are concerned—using "planning" in its broader sense—there has not really been an increase in planning judicial reviews for a long time. The big increase has been on immigration and similar cases. I do not see clause 21 and the increase in judicial review cases as being at all linked. Experience has shown that big projects proceeding under the Planning Act and its predecessors are virtually always dealt with without judicial review. I do not think that it is that relevant.

Q268 The Chair: In view of the fact that we have not taken up all our allotted time, unless there are any other themes that anyone wishes to raise, I thought it might be appropriate, if the witnesses felt that there were any areas they had come prepared to cover and have not had the opportunity to do so, they could add to what they have already said. There is no obligation.

Pamela Learmonth: I want to reiterate and clarify some of my earlier comments. We are still awaiting a consultation from the DCMS on clause 7, which will give us more detail on that. We are awaiting that, as I am sure you all are. We are more than happy to provide more information once we have seen that detail. However, as we understand the intention of that clause, it is not to initiate a planning free-for-all, but trying to streamline the process, so that the siting of street cabinets and the use of overhead broadband lines is easier to do, to help the private sector to roll out the connectivity that we are all crying out for in a more efficient and effective way. We very much support the intention of that. We have been calling for this since 2007, so this is very welcome, and we very much support the clause and the intention of the Bill.

Robbie Owen: May I make two additional points that relate to the brief memorandum that I submitted in advance? The first relates to clauses 19 and 20 and the vexed subject of the special parliamentary procedure, which is a rarely used and, in consequence, not well understood. We support the Government's wishes to curb the application of special parliamentary procedure in a number of cases, both to prevent it from applying in cases involving the compulsory acquisition of land belonging to a local authority or statutory undertaker and—this is about clause 20—when it does apply, to restrict its scope to just the compulsory acquisition issues that have given rise to it applying in the first place. We have the current unhappy experience of the Rookery South development consent order, which is subject to SPP at the moment.

We feel, however, that the Bill does not go far enough, in that clause 19 should also remove altogether the prospect of the special parliamentary procedure applying in a case involving the acquisition of open space, as distinct from National Trust land, commons and allotments. Open space can be any land that is used as a matter of fact for public recreation. It does not have to be publicly owned, and in my experience, it comes up a lot with linear infrastructure projects. Given the broad scope of the 2008 Act process and how projects are examined, we feel that there is no need for the additional check or balance of SPP applying in cases involving open space.

The other point I want to make is that we think things could be added to the Bill to improve yet further the workability of the 2008 Act for national and significant infrastructure projects. In essence, those provisions should be to facilitate even more of a one-stop shop. Secondly, they should allow the regime to be a bit more flexible and proportionate, as opposed to being one size fits all.

Thirdly, and perhaps most importantly, we think that the benefit of the regime's having fixed time scales for examinations and decisions could be applied to the pre-application stage as well by having a degree of more active programme management, or case management, by the Planning Inspectorate, to make sure that the pre-application period, when all the consultation and assessments are done, is no longer necessary. At the moment, it can be a period of up to three, four or five years before projects even get before the inspectorate, and therefore even trigger the fixed time scales. We hope the Committee will consider adding to the Bill in those respects.

Angela Knight: As an energy industry, our predominant interest in the Bill lies in the technical changes that are made in some of the clauses relating to old legislation. Apart from clause 21, our interests are much more of a detailed nature. One point that I want to make is that we are supportive of the thrust of the way that the legislation has gone in planning, because there are some major projects—energy projects—that are coming forward, as you know, and there is a need to get that proper balance between the local consultation and the real issues that the local communities are experiencing, but to enable the projects to go ahead as appropriate in the national interest. As I said, we are supporters of the broad thrust of the way the legislation in this area has been changing and of this Bill.

The Chair: As there are no more questions, this brings us to end of the business for this morning.

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

11.12 am

Adjourned till this day at Two o'clock.