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HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

GROWTH AND INFRASTRUCTURE BILL

Fourth Sitting

Tuesday 20 November 2012

(Afternoon)

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

Paul Callaghan, Partner, Taylor Wessing LLP

Sarah Jackson OBE, Chief Executive, Working Families

Sarah Veale, Head of Equality and Employment Rights, Trades Union Congress

Mike Emmott, Employee Relations Adviser, Chartered Institute of Personnel and Development

Dr Nigel Stone, English National Park Authorities Association

Shaun Spiers, Chief Executive, Campaign to Protect Rural England

Gordon Edge, Director of Policy, RenewableUK

Simon Marsh, Head of Planning, Royal Society for the Protection of Birds

Ingrid Samuel, Historic Environment Director, National Trust

Naomi Luhde-Thompson, Planning and Policy Adviser, Friends of the Earth

Ruth Bradshaw, Policy and Research Manager, Campaign for National Parks

Public Bill Committee

Tuesday 20 November 2012

(Afternoon)

[Philip Davies *in the Chair*]

Growth and Infrastructure Bill

Written evidence to be reported to the House

GIB 20 Campaign for National Parks
GIB 25 Friends of the Earth
GIB 30 RenewableUK

2 pm

The Committee deliberated in private.

Examination of Witnesses

Paul Callaghan, Sarah Jackson OBE, Sarah Veale and Mike Emmott gave evidence.

2.2 pm

Q269 The Chair: Good afternoon. We will now hear oral evidence from Taylor Wessing, Working Families, the Trades Union Congress and the Chartered Institute of Personnel and Development. Before I ask the first member of the Committee to ask a question, I remind all hon. Members that questions should be limited to matters within the scope of the Bill, and that they must stick strictly to the timings agreed under the programme order that the Committee has agreed, which means that this sitting will end on the dot, no later than 3 pm. I ask the witnesses to introduce themselves quickly to the Committee.

Sarah Veale: I am head of equality and employment rights at the Trades Union Congress.

Sarah Jackson: I am chief executive of Working Families.

Paul Callaghan: I am an employment law partner at the City law firm, Taylor Wessing.

Mike Emmott: I am an advisor at the Chartered Institute of Personnel and Development.

Q270 Ian Murray (Edinburgh South) (Lab): Good afternoon, panel. Can you tell the Committee how much consultation there was on this particular proposal before the Bill was published?

Sarah Veale: Shall I start? We are not aware of there being very much consultation at all. Of particular concern to the TUC was the lack of any impact assessment, or even a quick assessment of the impact through less formal procedures. We only had three weeks' consultation time, and we found it very difficult working out what the impact would be without the normal help from the Government Department responsible in setting out its calculation of the impact on employees and employers, and so on.

Sarah Jackson: I would add that we have 100 employer members. We work with both employers and employees. It would have been good, with this kind of proposal, for us to have been able to do a good consultation with our members to see what they thought. We have not had time to do that, unfortunately.

Paul Callaghan: From the perspective of a lawyer who acts primarily for companies, there does not seem to have been any thought put into how it is going to work practically, from the company's perspective. It is all very well saying that shares of a certain value will be given to these owner-employees, but how are those shares going to be valued? What is the practical way of doing that? How is the company going to pay for those shares as a matter of corporate law? None of that appears to have been thought through.

Mike Emmott: When the Chancellor announced the proposal, it came completely out of the blue to us; we knew nothing about it.

Q271 Ian Murray: May I ask each panel member what you think the risks are, not just to the employee, but to businesses, if they take up the employee ownership schemes?

Sarah Veale: I think that the risk to business would be largely reputational. If a business wants to engage its employees, which I am sure all good businesses do, they would no doubt be very wise to look at employee share ownership, as the Nuttall review recently identified, as a way of enhancing the relationship and ensuring that employees feel that they have some real stake in the company. What we find really objectionable is the idea that you can have this only if you are willing to trade important employment rights; we can come on to that in a minute. We regard it as possibly illegal to expect people to contract out of their statutory rights. From the point of view of the company's reputation, I would not touch this with a bargepole.

I also think that there would be high risks for small businesses that might not understand how all this is going to work. They might inappropriately give shares away and not understand what the implications could be. It is difficult to know all this, because there is no impact assessment. It could be, for example, that the employee, on being dismissed, would be the possessor of some shares in the company. They might want to turn up at the annual general meeting afterwards and might cause all sorts of trouble. All these are unknowns, because none of that appears to have been thought through properly.

Sarah Jackson: At Working Families, we benchmark good employment practice, and we have done extensive research into the benefits of flexible working. We can show that there is a positive correlation between flexible working and performance. We can also show, from the experience of our members, that offering a good maternity leave package improves retention rates among women in the work force. Both of those are under threat under the proposal.

There is also a real risk to employers to do with additional complexity. If you have a work force where some people have one set of rights and others have other rights, it will be easy to trip up and get things wrong. Overall, I think there are probably more risks than benefits to employers, and I would not advise our members to introduce this kind of proposal.

Paul Callaghan: I would say that there will be more costs for business. Valuing shares in order to give them away costs money. Commissioning a valuation report

can often be an expensive process, particularly for emerging growth companies, which are typically what my client base is. I suspect that it will not be particularly attractive to many companies.

As has been said, you have to deal with what happens to the shares when employees leave. A company cannot just buy back shares, as a matter of corporate law, unless it has distributable profits, which is very unlikely in the sort of small, emerging growth company that this is envisaged to appeal to; from capital, it is particularly complex.

My fear is that if this took off, you would see the labour market becoming less flexible, because employers might find it more off-putting to terminate someone's employment—they would then potentially have to find money to buy back the shares—than simply to follow normal unfair dismissal rules, which do not kick in anyway now until an employee has had more than two years' service.

Mike Emmott: I think that employers would be disappointed if they thought that simply by offering shares they were buying an increment to motivation and engagement on the back of the John Lewis model, which is often quoted in support of wider employee share ownership. The point about John Lewis is simply that it does a lot of things right; it depends, critically, on the way the place is managed—on good line management and leadership. Anyone who bought this package in the belief that it would be a short cut to a highly engaged work force would be missing the point.

Sarah Veale: Some significant employer groups have come out opposing this. Justin King, the chief executive of Sainsbury's, said that he thought it would do his company a lot of reputational damage, and that he did not want anything to do with the idea of removing people's employment rights in return for a stake in the company. He would give them a stake in the company of his own volition, but he would have no truck with this. I think that is a very important message from an extremely senior business.

Q272 Ian Murray: I have one last question. Will the employee-owner contracts be completely voluntary? Will they encourage employers to hire more staff?

Sarah Veale: I think "voluntary", in quotes, because the reality of an employment relationship is that the employer has more power than the employee, and our fear is that people will be under duress to accept the job because they are desperate. If they are not given proper advice, they may walk into this without realising what they are sacrificing. For people who are already employed, there are very serious issues about suddenly changing the terms of their contract, which could be done through bullying or all sorts of threats about what will happen if they do not go along with it. I think those are very real issues.

We would argue that people are putting themselves at risk of losing rights that, interestingly, the Government have been espousing this week as being very important. Sarah has talked about flexible working and so on, but a contrary message is coming across here all the time, and I am sure it is confusing employers, too. On the one hand, we want to encourage flexible working and shared parental leave, but on the other hand, those rights are so unimportant that they can be traded away for a rather dubious-looking share option.

Sarah Jackson: Although I am pleased to see the Business Minister, Michael Fallon, emphasise that the arrangements between an employer and an employee should be voluntary, I am very concerned that jobseekers might be expected to apply for a job that comes in an employee-owner format. With the best will in the world, our experience with Jobcentre Plus advisers—looking at how they are supporting or not supporting lone parents back into work—is that there is a lot of pressure for people to take jobs that do not fit with their child care responsibilities, for example. I would not be confident that Jobcentre Plus advisers will necessarily be able fully to advise and support low-income or unemployed people who are on jobseeker's allowance, and I think that is a real risk area.

Paul Callaghan: This proposal is clearly only optional one way. If a job can be made conditional on accepting an owner-employee contract, that is only optional to the extent that eating and drinking are optional. If you need a job, you have to take whatever terms are offered. It is a fallacy to suggest that that is optional.

When employees are gaining unfair dismissal rights only when they reach two years' service, you have the possibility that employees who are coming to two years' service will find their employment contract terminated, with re-engagement being offered only if they accept the owner-employee model.

The other thing to bear in mind, of course, is that, in reality, employees effectively have to pay to take such jobs, because receiving the shares is subject to income tax, if the shares happen to be in a public company and are therefore readily convertible assets, and national insurance. Either in their first pay packet or when they fill in a tax return—the proposal could potentially bring more people within the sphere of having to fill in tax returns, which will be a burden on the Revenue—people will have to pay tax on the value of the shares that they had supposedly been given.

Mike Emmott: In a tough labour market, which we have, and which we foresee for the medium term, this is a tough one. There will be employees or would-be employees who have limited choices of where to work, and for whom these offers will therefore turn out to be Hobson's choice, or who will at least be under some pressure to take a job on those terms. The problem will be that they may not know very clearly how to assess the risks, in terms of possible redundancy and the impact that that would have with no protection, and the benefits or the value of the shares. There would be considerable uncertainty.

On the question of whether the measure will encourage growth in jobs, I think all the evidence we are aware of from the OECD and elsewhere is that the link between employment regulation and growth is pretty uncertain—it is not a straight line—and it is hard to see how the limited but real loss of employment protection involved in the proposals will produce additional jobs.

Sarah Veale: Can I add one very quick thing? In the recent consultation on no-fault compensated dismissals, only 40% of businesses said that employment legislation was putting them off hiring new staff, and only 1% cited unfair dismissal. I agree with Mike that it is a fallacy that the proposal will make any difference to the propensity of businesses to take people on.

Q273 John Glen (Salisbury) (Con): I would like two points of clarification. First, to Sarah Veale, on the stripping away of rights, am I right in thinking that the working time regulations and the current discrimination law would not be affected at all under these proposals, and would still stand? Is that correct?

Sarah Veale: That is quite correct. Those are in EU law, and it is not possible to contract out of them. It is interesting that the areas that have been picked in this proposal are all domestic law. The TUC would argue that it is highly dubious, legally, getting people to contract out of domestic law unless they have had proper legal advice. There was an attempt made a while ago in the fixed-term working regulations to have a position where people could opt out, and the Government were very strongly advised that people would be able to do that only if they got legal advice and knew what they were doing when they sold their rights, as it were.

Q274 John Glen: The second question is to Paul. I worked in the private sector for 10 or 12 years. When you move to different stages of employment—I did not quite get there, but if you become a partner in a professional services firm, for example—your employment conditions change quite significantly, and you perhaps have some inducements with respect to shares and so on. Is it not quite commonplace in many organisations for there to be an evolving set of incentives and pay packages, and varying responsibilities and rights that go with it? It is projected as though the provision is a complete break with everything.

Paul Callaghan: Absolutely, if the benefits that you are going to get are commensurate with the rights that you are giving up. I am a partner, so I do not have unfair dismissal rights. I do have discrimination rights, but I chose to become a partner and, frankly, it is a good economic deal for me.

Q275 John Glen: But this is a choice as well.

Paul Callaghan: Well, as we have said, it is not a choice if you have to take the job and it is potentially just for £2,000-worth of shares, which, in a start-up or an emerging growth company, might be worth absolutely nothing. Where is the bargaining power there? I had bargaining power choosing to be a partner. If I were a relatively junior employee in a small start-up company, I might not have that bargaining power. I am already in a situation in which I get unfair dismissal rights only after two years, anyway.

Q276 Mrs Mary Glindon (North Tyneside) (Lab): This is a question on the voluntary element of the clause. As this is a growth Bill, my concern that I would like the witnesses to address is about the effect this would have on wider employment issues, outside the people who are subject to this bargaining or voluntary element. As has already been said, the Government are saying that it is completely voluntary. If the clause stood, what would the panel say would enable any safeguards for people? Are there any that can be put in place?

Sarah Veale: One thing that we would say was absolutely crucial was that people should not be able to do this unless they have got independent legal advice. There is an issue there, of course, about whether they can afford to pay for it, so there is another issue about whether the advice should be publicly funded or provided by the employer. If they really want to do this, they will have to stump up some money for it. On the idea of people signing away their rights without any kind of legal advice, most people will not be aware of what rights they are signing away and what the consequences would be.

I also think, in terms of other businesses, that all this is having a cumulative impact. There is a message that keeps coming across about getting people out of work rather than getting them into work. It seems extraordinary to me, if this is supposed to encourage employee engagement, that it focuses so much on either getting rid of people's unfair dismissal or redundancy rights, which accrue only when you go, or attacking people on the basis of family-friendly rights, which other bits of the Government are saying are all important to help with other social problems in the economy.

Sarah Jackson: I am very concerned about the mixed messages and the way this proposal appears to reinforce a lot of employer misconceptions, particularly in the SME sector, about employee rights versus employer obligations and power. I notice that an impact assessment talks about how employees would have the protection of the Equality Act 2010, but if you are a low-paid person, the Equality Act is pretty meaningless for you. We take calls almost every day on our legal advice service. We will have somebody who says, "I can see that my employer is discriminating against me. I understand what my rights are. I need this job too much. I cannot possibly challenge." So on the one hand I would like to challenge this notion of choice—for lower-paid people, there is no choice; it is a job or no job—and on the other hand I would like to really think hard about the messages that we are giving to employers.

Last week, I had a really vivid personal example of the common misconceptions. I was doing ITV news to comment on the Deputy Prime Minister's announcements about the extension to the right to request flexible working, and I was on with a small business owner. They said, "I am a small business owner and I have no right to discuss with my pregnant employee when she intends to return to work." That is nonsense, but it is very common.

The best thing the Government could do is a really good campaign to explain to employers, especially small businesses, how employment law works, to get away from the fear, where managers are so frightened of their employees and these enormous rights that they apparently have, when we know that the power really lies with the employer.

Paul Callaghan: I agree with all that, but from the business perspective, the rights that will remain are the most complex and expensive rights for employers to deal with anyway. I do not see any great attraction from the employer's perspective to this proposal. They will have to give away equity in their company, but employees will still be able to bring unfair dismissal claims for reasons where the dismissal would automatically be unfair, such as for whistleblowing, where you do not need a year's service, and all the discrimination claims. I imagine that you will see a rise in those sorts of claims, which are more complex and more expensive to defend, from owner-employees.

In the US, where they generally have at-will employment and they just have discrimination rights, the costs of dealing with employment litigation are considerably higher than they are in the UK, even though it is a more deregulated culture. If you have basic rights to unfair dismissal, people do not need to claim these more complex rights. Remember that it was a Conservative Government who brought in unfair dismissal rights in the first place. People have a sense of fairness and feel that if they have been treated badly, they ought to have some sort of remedy for that. If you limit those remedies, you may simply make it more complex to deal with whatever remedy they search for.

On taking away statutory redundancy payments, it is only £430 for every year of service where you are below the age of 41, or one and a half times that for every year of service over the age of 41. That is not a lot of money relative to the hassle and cost of getting a valuation report to try to buy back shares at a reasonable price. Most companies would be a lot better off simply giving the statutory redundancy payment.

As for losing your right to request flexible working, the statutory right to do that came in to codify what was effectively indirect sex discrimination law in the first place. Everybody will still have the right to claim for indirect sex discrimination if they are refused the right to work flexibly, so those requests will still be made, but they will no longer be made in this codified way. Compensation for sex discrimination is uncapped. It is only eight weeks' pay under the statutory flexible working remedy, so you will potentially see higher value claims brought by these people if they feel disgruntled, so I do not think it will benefit business in the way that it is meant to do.

Sarah Jackson: I will add very quickly to that. When we get people calling the helpline who have had a flexible working request turned down, the employee is far more likely to accept the decision when the employer has gone through the full process than when the employer has simply said no. We are much more likely to get the employee pressing for a tribunal claim if the employer has just said no. Process is really helpful in this situation.

The Chair: Before we go any further, I will just let our witnesses know that in the next 10 minutes there may be a vote on a ten-minute rule Bill. If there is, I will have to suspend the sitting for 15 minutes, but the session will still finish at 3 o'clock. You should just bear that in mind.

Mike Emmott: You asked about the wider impact of an employee taken on under these terms. Paul spoke about trust. The legislation as it appears at the moment poses a big challenge for the employer to explain to the potential employee what it is he or she is getting out of it, what the deal is beyond the loss of employment rights and what possible justification the employer has for adopting the provision. The employer's vested interest is to create a climate where the employee wants to work, wants to give his best, trusts the employer and is offered a reasonable deal. I think there is a lot of work for the employer to do. He has been set a difficult challenge.

Q277 Henry Smith (Crawley) (Con): Clearly, there is not a lot of enthusiasm from the witnesses for the employee ownership part of the Bill. However, if Parliament were minded to go ahead with this part of the Bill, what sort of safeguards would you like to see? What safeguards would you think were the most important to preserve?

Sarah Veale: As I have already said, we would absolutely insist, as far as we can insist on these things, that the person should be advised legally before they enter into these kinds of contracts. Otherwise, because of the unfairness of the relationship, they will simply not necessarily know what it is they will not be able to do.

I would also have a very serious look at the tax side. We cannot see anything in there—I am certainly not a tax expert—to stop, for example, a group of people getting together, turning themselves into forming a company, calling themselves employee-owners, making some money, flogging the company off and getting loads of money off selling the shares, without any capital gains tax hitting them whatsoever. I would have enormous worries about the public purse, if this were to take off as a new tax scam. There are enough problems around already with people evading—sorry, avoiding—paying their tax. I would have thought that setting up something else that could open up doors to more of that would be very serious indeed. Those are two absolute prerequisites.

For the record, the TUC would advise very strongly against doing this at all. It should just be forgotten about. It is not sensible.

Sarah Jackson: Our starting point would be to drop the clause. But if you are going to keep it, you should introduce new automatically unfair grounds for dismissal. So if you refuse to do a change to employee-owner status, that should be an unfair dismissal. No jobseeker should be forced to accept employee-owner status. We would like a review period of three to five years just to see how it is going, like all new employment regulations. Finally, this may perhaps not be possible within the terms of the Bill, but why not drop the clause about no rights to request flexible working? Let us attach to the Bill the extension of the right to request flexible working. That is really about growth and prosperity.

Paul Callaghan: I would say take away the income tax charge because that is potentially more of an issue than the capital gains tax exemption. At the moment, you only pay capital gains tax for gains over £10,800 anyway, so if you are at the bottom and have been offered £2,000 worth of shares, the company will have to do pretty well before that exemption means anything to you at all, whereas you are going to have had to pay a charge on getting the shares in the first place.

I agree about making it genuinely optional, so that any jobs offered should be on the basis that you can choose a regular employment contract or an owner-employee contract. Also from the business perspective, you need to put something in place to make it simple and cheap properly to value companies. Another obvious flaw is that start-up companies are often not worth £2,000. The idea that you can give away shares worth £2,000 to a load of employees is just a complete fallacy. Nobody seems to have spoken to corporate lawyers at all when they dreamt up this plan.

Mike Emmott: I endorse Sarah Jackson's point about making it automatically unfair to offer an employee who is already employed the sort of terms envisaged by the legislation. Beyond that, we find the legislation so unattractive that it is hard to think of an effective protection.

Q278 Simon Danczuk (Rochdale) (Lab): You will be aware that this Bill is called the Growth and Infrastructure Bill. I work on the assumption that this employee-owner issue falls into growth section of that title. Starting with you, Sarah, do you think that this will improve economic growth?

Sarah Veale: I think that that is inconceivable. The CBI itself is on record as saying that this would attract a very small number of niche companies. Unless the tax loopholes suddenly become attractive to people, which is not a way of growing business, but a way of not paying tax, I simply cannot see anything at all in this that will make much difference to economic growth. I completely agree with what Sarah said. There are other measures, particularly those on family friendly rights that have been taken recently, that are far more likely to stimulate growth, get more people back into work, which is what we need, and get them spending money and stimulating the economy in that way.

Sarah Jackson: I think that there will be minimal take-up, but the potential for great damage in terms of reinforcing messages about the burden on business of flexible working and of mothers, in particular.

Q279 Simon Danczuk: Damage rather than growth.

Sarah Jackson: Yes.

Paul Callaghan: Most of my clients tend to be US technology corporations that have set up in the UK. None of them is put off coming to the UK because of UK employment law. We already have the third most flexible employment laws in the world, or in the western world, after the US and Canada. They are put off by our complex immigration laws and the time that it takes to get a sponsor licence to be able to bring executives across who would create jobs in the UK. Those are the messages that I hear time and again.

Q280 Simon Danczuk: Okay. So there is no evidence to suggest that a provision along those lines would promote jobs or economic growth, and the evidence is the reverse. A Minister said recently:

"By responding to the flexible needs of fast growing companies, it will help them take people on, providing a real incentive for employers and employees."

Is there any reality in what she said?

Sarah Veale: With respect, I do not think that there is. The Business Department did their own survey of small businesses, and what they identified as being particularly important was the ability to release capital to help them to grow. Employment regulation actually came well down the list in terms of importance, and unfair dismissal came even lower than some of the other employment rights that they are concerned about. I very much echo the point Sarah made earlier: small businesses need quite a lot of help and guidance on how relatively simple it actually is to employ people. They need help with getting finance to grow. That is what they need.

Simon Danczuk: Any other comments on that, briefly? No.

Q281 Bob Blackman (Harrow East) (Con): We have heard evidence from employer organisations saying that the measure is only going to be for a particular part of the market; it will not be general. I think that witnesses such as Sainsbury's have already said that it is not for them. Clearly, the question is this: in principle, are you against entrepreneurial firms taking this opportunity to have employees owning the company and therefore having a big stake in it, but exchanging that ownership for some of their other rights? We have already heard that they do not acquire those rights for two years in some cases. What is your principal objection here? I do not see what there is. This will not be for everyone. It is not for the whole country; it will be for particular niche firms. Where is your objection?

Sarah Veale: I think that it is a very dangerous road to start going down, suggesting that people can trade in their employment rights for various offers that may seem attractive to the employer. However long it takes to acquire these rights—the rights that are being talked about have different qualifying periods—you want to keep people on. You do not start saying, "Once you've been here a certain amount of time, we're going to get rid of your rights." There is a real fear that employers will take people on, and when they get up nearly to the two-year point, they will try to force them into a position where, at that point in their career, they sacrifice their right to be protected were they to be dismissed in the future. That is going to get you into this very difficult territory that others have talked about, where you can be put under duress to take this or get out. That is not a comfortable and productive employment relationship.

Q282 Bob Blackman: But would you have an objection to people being heavily motivated, because they part-own the company, to work well for the company and actually enhance their share and stake in it?

Sarah Veale: We are totally in favour of employee share ownership, absolutely. It is not fair to expect people to trade something off for that, and it is dangerous to get into trading basic rights.

Q283 Bob Blackman: So you want to see more opportunities, but no trading of rights?

Sarah Veale: Without the sword of Damocles hanging over them to get rid of their rights if they sign up for the shares.

Sarah Jackson: I was struck by the Employee Ownership Association saying that there is absolutely no need to dilute the rights of workers in order to grow employee ownership. I think that that is the case. There are already employee ownership schemes that are very successful, and we would fully support them, but as I have already said, I am worried about the damaging messages that are undermining the very strong and welcome messages coming from the Government about the value of flexibility and employment rights in building engaged and high-performance work forces.

I am also worried about the risk to individual employees. I am thinking about somebody who perhaps goes into one of these deals with their eyes open as far as they can be. For example, they have no family responsibilities and think it is a great idea at the age of 26 to get into a new start-up company, but then their mother falls ill, or their partner develops cancer. They become a carer overnight, with no warning. If they then go to their employer and say, "I'm an employee owner here, and I am going to have to talk to you about some flexible

working, please, because I now have a family situation that I could never have envisaged a year ago," and lose their job on the back of that, that concerns me enormously.

Paul Callaghan: I am all for anything that incentivises employees, but I am not generally convinced that taking away rights like this is going to incentivise them, especially when potentially it is for a very small number of shares, which may ultimately be worthless. Generally, when you become a partner, for example, you might lose your employment rights, but you gain all sorts of voting rights within the partnership. You have a say in the running of the firm and its strategy. That is not necessarily the case if you are a very small shareholder.

Q284 Bob Blackman: Sorry, can I pick you up on that point? That is not necessarily going to be the case. At the moment, we have not seen the design of schemes. Surely, that would be one of those areas where employees would expect to see an opportunity to have a say in how the company is run.

Paul Callaghan: That would make it less attractive to companies. Companies are not particularly going to want to have this whole class of employee-owners who are going to be able to interfere in their decision making abilities. That is a completely separate area to how much flexibility companies should have about the rights they give to their shares. If you want this to be attractive to companies, they will want to be able to determine whether these shares have or do not have full voting rights. Will they be allowed to have good-leaver and bad-leaver provisions in relation to these shares, so if somebody commits gross misconduct, they do not get the value of their shares? Do they have to pay up for the shares immediately when somebody leaves, whether they have distributable profits or not? All those things have to be looked at from the company's perspective as well, and they do not appear to have been.

Mike Emmott: If I was working for an entrepreneurial, fast-growing company and they offered me shares, I might well find that worth considering. I would hope that my judgment about its continued fast growth was sound, because there is a risk if you invest both your savings and your salary in the same company. That is the slight downside to having shares in your own company. The point that I want to make is that I do not see any evidence that it is fast-growing companies that are most worried about employment regulation. Fast-growing companies are effective and well managed. That is why they are growing. I cannot see why they are going to be worried about coping with what the vast majority of UK employers cope with in terms of employment regulation.

Q285 Bob Blackman: Ms Jackson, am I right in saying that the position on flexible working and the rights to flexible working applies only to companies over a certain size?

Sarah Jackson: No. It applies to everybody.

Bob Blackman: Okay. Thank you.

Q286 Mr Nick Raynsford (Greenwich and Woolwich) (Lab): I am interested in the origins of the clause. You have all said that you were not consulted about the proposal. Indeed, if you had been consulted, from the evidence you have given us, you would have advised strongly against it. We have not seen much evidence produced to justify it. Would you give your views as to the origins of the proposal, which does not come from experts in the sector and does not appear to be based on objective evidence. Where did this idea come from?

Sarah Veale: Our view at the TUC is that this is version 3 of the attempt to get the Beecroft proposals through. It is yet another variation on the theme of making it easier to get rid of employees, particularly for small companies. Apparently, the perception—perception is an important word here—is that it is impossible to get rid of anyone once you have taken them on. I suspect that the thought that has gone into this has not really been motivated by the interests of employees, in terms of giving them shares, otherwise you would do what the Nuttall review suggested and work on good ways of encouraging employee share ownership. I think this is just a back door way of trying to ease into a situation where people start trading off their rights. I fear that if it goes through the principle will be accepted, it will be on the statute book and we will find Bills in the future that will similarly offer trade-offs for various rights in return for rather spurious goods, whether bonuses or something else that is not really worth having.

Sarah Jackson: It felt to me as though it were a bright idea for a conference speech. That is fair enough, but what leaves me disturbed is the fact that we have had a three-week consultation, and the legislation is being pulled together very quickly indeed. I compare that with the length of time that it has taken us to work on flexible working, for which it has now taken us 10 years to assemble all the evidence. We are now in a position where the coalition Government are saying that they are going to legislate to bring in something that was in the coalition agreement. The contrast between something that employers, campaign groups, family charities and policy makers have worked together carefully on for 10 years, assembling evidence to bring into law something that we all agree will benefit business and help recovery, and this incredibly hurried and surprising proposal just makes me think.

Paul Callaghan: I can only speculate where it came from. I suppose it was a combination of wanting to increase employee share ownership, which I think is a good thing, while thinking that some business dislikes employment regulations, so let us see if we can combine the two. It has not been thought through. I suspect that if it does end up on the statute books, it will not be used very often, because it will be too complicated and impractical to put into practice.

Mike Emmott: I agree with what has been said. It feels like policy by numbers. It ticks a number of the right boxes. It does not appear to have been thought through in terms of how those boxes relate to each other. It only makes sense as a toe in the door for employment at will, as the thin end of the wedge. That is the only way in which it is possible to interpret it.

Q287 The Parliamentary Under-Secretary of State for Communities and Local Government (Nick Boles): Ms Veale, I want to explore the consistency of what all members of the panel have said. You said that the Trades Union Congress opposes on principle any idea of trading a share in a business for employment rights.

[Nick Boles]

Are you therefore on record as being against all partnerships, which, as your colleague, Mr Callaghan, has explained, do exactly that?

Sarah Veale: Some partnerships have a perfectly legitimate status, certainly partnerships that run law firms. I do not have any particular problems with those. What we object to—

Q288 Nick Boles: But is it not the case now that they remove certain of the same employment rights in exchange for a share in the business?

Sarah Veale: It is not quite that simple.

Q289 Nick Boles: Just answer the question. Is that not the case?

Sarah Veale: There are different types of employment status in the UK, some of which have some rights attached to them, and some do not. There are casual workers out there who do not have most of the rights in here.

Q290 Nick Boles: But did not Mr Callaghan just explain that he does not have certain rights under employment law? I thought you had said earlier that you would oppose in principle trading away in exchange for a share of the business?

Sarah Veale: They are not—*[Interruption.]*

Q291 Nick Boles: I am asking Ms Veale a question at the moment. Did he not say that, and did you not say that you opposed it in principle?

Sarah Veale: These people are not employees. I am opposed to employees—the legal term—people who are employed by—

Q292 Nick Boles: But they are not employees, because they traded away some of their employment rights in favour of a participation in the upside of the firm.

Sarah Veale: They are professionals who choose to become part of running a company. That is a very different proposition compared with someone who cleans the floor down here, who has to work for a living.

Q293 Nick Boles: So the TUC is happy for certain people who work for big companies to trade away their rights of employment in exchange for a participation in the upside of that organisation. Is that right?

Sarah Veale: We have just gone through all this. They are not trading in a legitimate way. They are in a position where they are being forced to trade something away in order to work or in order to stay in a job.

Q294 Nick Boles: People are offered a partnership. The partnership has very clear conditions attached. You either accept it or not.

Mr Callaghan, you said that people take on a partnership because it gives them a real meaningful say in the direction of the business. Do you know how many partners PwC has?

Paul Callaghan: I don't, no.

Q295 Nick Boles: It is several thousand. Do you know how many partners Allen and Overy has worldwide?

Paul Callaghan: I don't.

Q296 Nick Boles: It is roughly the same figure. Do you think that individual junior partners like you, who take up the offer of a participation in exchange for giving up their employment rights, are really having much effect on the future direction of PwC?

Paul Callaghan: I think they are pretty well remunerated compared with the average person.

Q297 Nick Boles: What you have just explained in your evidence is that you expect that this would prove quite expensive for employers to do—which I agree with, by the way—and therefore presumably the logical conclusion is that you would do it only for relatively senior employees who work in a fairly serious role and therefore have a serious stake in the business.

Paul Callaghan: I think that you are right. The only people that this is going to appeal to are senior executives, potentially in private equity or venture capital-backed companies—

Q298 Nick Boles: Is it therefore not the case—*[Interruption.]* Excuse me, can I ask a question?

The Chair: Let them answer the question.

Nick Boles: He has answered my question. I want to ask him another question.

The Chair: They are here as witnesses.

Nick Boles: Okay.

Paul Callaghan: I think this will be used by senior executives who would have been given equity anyway, and now get a way of getting that equity with a capital gains tax exemption, so I think it will be popular .

Q299 Nick Boles: Given that that is the case, is it not strange that you said you thought that some employees would be offered a choice that was not really a meaningful choice, such as a choice between having food and not having food? These are relatively senior people who presumably have a track record of employment, who have alternative employment histories. These are not cleaners who are going to be offered a choice between a job with these conditions or no job at all.

Paul Callaghan: The way that this has been presented by the Government is that this is going to be primarily for emerging growth and starter companies, not for the senior executives and private equity-backed companies that I think will be quite happy.

Q300 Nick Boles: I put it to you, sir, as somebody who has actually run and set up two such businesses, that the very first people you employ—if you have an emerging start-up business—are people who will be very senior but if, by definition, your first employees are people who will grow into building that business, as that business grows, they rarely are very low-skilled employees. You normally do not have the luxury of that when you

are setting up a new internet business. You hire your sales director; you hire your personnel director; you hire your finance director. They are relatively high-flying people.

Paul Callaghan: If you want to limit this to a certain class of executive, we might be talking about something different. But that is not what the law does.

The Chair: I have other people to get in.

Q301 Nick Boles: Do you need to limit it, given that this is an opportunity that has been created in law that people can take advantage of or not, as they like? Other members of the Committee have already said that this is a niche opportunity for niche businesses. Those niche businesses happen to include among them some of the fastest-growing businesses in the economy. Is it not reasonable to create this opportunity, which only certain businesses for certain employees might take up?

Paul Callaghan: Not if it can be exploited potentially by others and affect people who do not have the same sort of bargaining power. That is the problem. There are no safeguards. It still remains only optional on the employer side.

Q302 Nick Boles: It would be very expensive for those people to do it—

The Chair: Hold on.

Q303 Paul Blomfield (Sheffield Central) (Lab): Thank you, Mr Davies. I understand why the Minister feels so rattled in the face of overwhelming evidence against his proposal.

I will give you the opportunity to answer the questions. Following on from that theme, if indeed this was a proposal about a very small category of niche employees in niche companies, would you be so worried on the basis that that is not the understanding of the legislation before us?

Paul Callaghan: Possibly less so, if there were more equality of bargaining power. I still think the message would be given particularly to women, when you are removing the right to flexible working even though, as I say, I do not think that it actually has any effect legally because of the sex discrimination laws. The message that you are sending to women is quite detrimental in terms of trying to create a family-friendly work force. If you have something closer to genuine equality of bargaining power, I would be less concerned.

Sarah Jackson: Even if this were only a niche product, I am still concerned because of the messages that it sends both to women in terms of welcoming them into the work force and in terms of the messages that it is sending to employers, particularly SMEs, about maternity, paternity, flexibility or being potentially a burden on them rather than something that will help them build their businesses.

Q304 Paul Blomfield: May I move to a different aspect of the issue—one that the Minister in his questioning to promote employee ownership will no doubt take account of? The head of the US National Center for Employee Ownership, which I understand is one of the leading groups in the world promoting share ownership, talks about the American terrain, and says that there is clearly a lot of employee ownership in our country, but not one of these employers or plans asks employees to give up any employment rights. Are you aware of anywhere else in the world where there is this trade of rights for shares? If not, why do you think that is?

Sarah Veale: I am not aware of any.

Q305 Paul Blomfield: Why do you think that would be?

Sarah Jackson: It is unnecessary.

Sarah Veale: It is dangerous. The point that we keep pushing across is that, if you get something on the statute book like this, it is the thin end of the wedge. It would be really relatively easy to open it up much further and start seriously stripping rights away from people who should be completely and utterly protected.

Q306 John Howell (Henley) (Con): I want to pick up where Nick Boles left off. When I became a partner in Ernst and Young, I did not take any legal advice. It was not the done thing to take legal advice. I did not need to take legal advice. I did not review the rights that I would get. I knew that I would be gaining a certain amount of additional income, although that was something that you could not tell in advance. The remuneration was placed at about the same level as that of the senior manager that I had been before, with an adjustment at the end if there were a profit for the year.

You keep making the contrast between that situation and the company situation, and I think that you have got this completely out of perspective. You keep saying that if you join a small company—a start-up company—the shares may have no value. Well, if you join a small partnership, the partnership will have no value. It will need some time—at least a year—in order to get that work under way. These are not the decisions that you make when you take these things into account.

Sarah Veale: There is a huge difference between someone who is very qualified and highly skilled who can make an intelligent and well-informed decision and somebody who is working in a tiny or new fast food store or something like that—there are all sorts of different types of businesses and they take on unskilled workers very quickly—who will not be able to compare the value of their employment rights with the potential for being a share owner. I am sorry, but they just will not be able to. They need to have some assistance and some guidance.

Q307 John Howell: I am equally sorry that I simply do not accept that. I do not accept that the man in the street does not know what rights he is giving up. That is inconceivable.

Sarah Veale: Well, you should come and listen to our helpline sometime. The ignorance people have about their employment rights is absolutely phenomenal.

Q308 John Howell: We can argue about this for ever, I suspect, and we will no doubt argue about it more in Committee. It is not just for people with exceptional skills or exceptional interests in an area to take this forward. It would have been extremely useful to be able

[John Howell]

to offer anyone who was part of the company this incentive when I started up my own two small companies before I came into Parliament.

Sarah Jackson: I think that I would like to reflect on the evidence that was given by the British Chambers of Commerce, which said that it could see that this kind of employment contract could restrict small businesses' ability to recruit, and I can understand why. If I think of the kind of people who ring our helpline—like Sarah, if you want to come in and listen to the kinds of things that people ring us up about, just let me know, because you would be very welcome—the average person is on a family income of £28,000 or less, so we are not talking about high-paid people; we are talking about the kind of people who probably have responsible jobs. We are not talking about cleaners; we are talking about people who are working for small and medium-sized organisations. They are responsible and middle ranking.

I can easily see a situation where someone might call us and say, "My potential employer is a new start-up and they want to recruit a dozen people. I am quite interested in that and they are offering me £25,000 a year. What do you think?" Our advisers would have to say, "You need to think about this really carefully. You have got a mortgage, you have got kids and you could have care responsibilities. Understand what you are signing away." They do need advice at that point.

I am also thinking about the maternity leave provision and the fact that a woman who goes on maternity leave would have to give 16 weeks' notice of an early return rather than eight. In my experience, women do not very often choose to come back earlier than they had originally said from maternity leave. That situation means that something has drastically gone wrong at home. It may well mean that the partner—the father of the child—has lost his job, for example. If you then have a situation where she cannot get back to her paid work for almost four months, you are looking at a family who may be facing poverty wages and going to the benefits system. We all keep saying that this has not been well thought through and the impact on maternity leave is evidence of that.

John Howell: I am sorry—

The Chair: I am sorry, but we will have to move on. We have three other people who want to get in, and we have only six or seven minutes left.

Q309 Roberta Blackman-Woods (City of Durham) (Lab): I will try to be quick.

I want to deal with some of the possible complexities of this. If I am this niche worker in this niche go-ahead company and somehow it fails or I decide that it is not suitable and I want to get out and sell the shares, I will not know their value. Will we have a whole set of difficulties with people who want to leave and might want to sell their shares? That is my first question. Will there be additional costs for the company?

Paul Callaghan: Exactly. It is not clear at the moment who will have to pay for the valuation of shares when an employee leaves. Will it be the employer or the employee? What if there is a dispute? Will there be court action as to whether a reasonable value has been paid? Will there be employment tribunal claims in which people dispute whether they were genuine owner employees in the first place and challenge whether the shares were of the value that they were stated to be? It is very complicated.

Q310 Roberta Blackman-Woods: I would like to explore that further, but we do not have time. Maybe we can get some written evidence from you. The second point I want to raise is about the equality impact assessment. I have been quite struck this afternoon by what all of you have said about the implications for women in particular. We do not yet have the equality impact assessment, although I understand that one is being done at the moment. Clearly, that is something that you think should be taken into consideration before we make a decision on this clause.

Sarah Veale: I think that there is an equality impact assessment, but not a generic impact assessment of this particular clause, as I understand it. We thought that the equality impact assessment was extraordinary, because it claimed that there was no gender impact, and yet, by definition, if you are trading in your right to request flexible working and your notice period on return from maternity leave, it would be extraordinary to say that that did not have a particular gender impact. As far as I am aware, it is women who get pregnant and come back from maternity leave, not men.

Sarah Jackson: Yes, I agree, and there was a very strange use of the work-life balance survey as well. They seem to have looked only at full-time workers, whereas the work-life balance survey shows very clearly that more women than men take up flexible working options. We have real problems with the impact assessment.

Q311 Dr Thérèse Coffey (Suffolk Coastal) (Con): It feels a little bit like doomsday scenarios are being painted here. Given that certain rights will continue to be guaranteed, such as those covered by anti-discrimination laws, it feels like a somewhat excessive reaction. Mr Callaghan, I understand that your firm is active in Tech City. Multiple tech business owners and founders have publically welcomed these proposals—I am thinking about people such as Mike Lynch from Autonomy—saying that this is potentially very exciting. What will you be advising your current and future clients in Tech City?

Paul Callaghan: I will be delighted if we can put forward a package that would make this workable, but a lot of the points I have made have been about why I do not think it is particularly workable at the moment, and why, if it is going to be on the statute book, it needs to be practical for companies. It is as much from the companies' perspective that I have objections as from acting for senior executives, which I also do.

Q312 Dr Coffey: But you do accept that there are people who think this could work, including company founders, and that they are quite excited by the prospect of trying to make it work.

Paul Callaghan: Well, all I can say is that nobody I have spoken to is excited about it. I am delighted if people are—if that is another product for us to sell, that is absolutely fine by me. My business is about going to

Tech City and the US to sell the UK to technology companies. I want to do that. If this was something that I thought would genuinely do that, I would be thrilled.

Sarah Veale: If there was an impact assessment, we might be able to answer this more sensibly. We do not know, because there is no one telling us whether a huge number of people out there, having been consulted, are saying, "This is a fantastic idea and we're going to go with it." There might be, but I have not seen any.

Q313 Dr Coffey: I understand that the outcome of the consultation is due soon, although I do not know. I suppose I am just concerned because this is an innovative proposal. I appreciate why people are concerned, but why step in and be a barrier when people are willing participants? That is what I am trying to understand.

Paul Callaghan: I have been pointing out what appear to be the flaws in the plan. If you can remedy those flaws, my firm will certainly be looking to try to sell this product and promote it. I just cannot see how that is going to be done very easily, and certainly not by April next year, when it is due to come into force.

Q314 Ian Murray: I think that it is becoming quite clear that this could be the first Bill in history that comes into law before the impact assessment or the consultation has been published. I have one very quick question for Mr Callaghan. When you made the decision to become a partner of the firm that you were employed by, was it a voluntary decision?

Paul Callaghan: Absolutely voluntary.

Q315 Nic Dakin (Scunthorpe) (Lab): If this scheme does come into play, are there any safeguards for employers or employees that you think can be put in place to make it work?

Sarah Veale: As we were saying, there is the automatic unfair dismissal protection for people who are pushed into this unwillingly. Also, as I said earlier, we absolutely insist that people should be given legal advice before they decide to trade in their statutory employment rights for something as uncertain as this. That would be essential for us. But we regard this clause as an absolute disaster, and we suggest that the Government need to go away and think more carefully about employee share ownership, which the TUC thoroughly approves of. The Government should not see it as something you can marry with getting rid of employment rights. Many employers are on record as saying that such rights are important to have—they are good for the reputation of the company, apart from anything else.

Paul Callaghan: I would say, as I act primarily for companies, that you have to look at company law and work out how companies can lawfully give these shares away and work out a way of properly valuing shares both on entry and exit. If an emerging growth company is going to take on a lot of employees, does that mean that it needs to go through an evaluation exercise every time it hires or loses an employee? It just is not practical. How are those practical issues going to be dealt with?

The Chair: Order. I am afraid that brings us to the end of the time allocated for the Committee to ask questions of these witnesses. On behalf of the Committee I thank all the witnesses for joining us today.

Examination of Witnesses

Dr Nigel Stone, Shaun Spiers, Gordon Edge, and Simon Marsh gave evidence.

3 pm

Q316 The Chair: I welcome our new witnesses. Before we ask the first questions, could I ask each of the witnesses to introduce themselves briefly to the Committee?

Simon Marsh: Good afternoon, I am Simon Marsh. I am head of planning policy at the RSPB.

Dr Stone: Hello, I am Nigel Stone. I am the chief executive of Exmoor National Park Authority, and I am representing the English National Park Authorities Association.

Shaun Spiers: I am Shaun Spiers, chief executive of the Campaign to Protect Rural England.

Gordon Edge: My name is Gordon Edge, and I am director of policy at RenewableUK.

The Chair: I remind everybody that this session will finish no later than 4 pm.

Q317 Roberta Blackman-Woods: I add my welcome to the panel. Could you start by telling us what you think will be the environmental impact of the measures in the Bill?

Simon Marsh: A number of issues concern us. The chief one that I wanted to talk about was clause 4, on information requirements. I am sure that other colleagues will cover broadband in national parks. From our perspective, the clause attempts to deal with only part of the story in terms of information requirements.

The RSPB deals with about 1,000 pieces of planning casework—planning applications—each year, and in our experience, many times the problem is with a lack of information or the poor quality of the information that is provided to support those applications. That inevitably causes delays in the process. On the face of it, the clause seems perfectly reasonable. After all, it seems to be asking only for what is reasonable, and what could be more reasonable than that? That is, of course, already in planning policy. I do not think that that will truly address the issue. The issue is not so much the quantity of information provided as providing the right information for the decision maker. I think that is partly an issue about the local planning authorities having the right resources and skills to know what information to ask for and to be able to deal with that when they receive the information.

To my mind, the clause does not really deal with the problem. I have an alternative solution, which is for development which requires environmental impact assessments to require mandatory scoping at the pre-application stage, where environmental bodies, statutory agencies and bodies such as us can agree with the developer and the local planning authority what information is required so that the right information is provided and the application process can flow smoothly. To do that would not require a change to primary legislation. We could do it through regulations.

Dr Stone: I have three clauses I would like to mention. First, clause 1, which relates to major development. I accept that it is difficult to understand what impact that might have in a practical sense in a national park

context, where national park authorities are the planning authority. We would like to understand a bit more about the potential impacts there.

As for clause 5, we are very concerned as national park authorities about the probably unintended adverse impact on the provision of local affordable housing in some of the more deeply rural areas that we work with and within, particularly the self-build, single-dwelling, owner-occupied affordable home, which we think that the Bill, as currently drafted, may have an adverse impact on.

The third element of the Bill, as drafted, about which we have some concerns is clause 7. We are entirely and utterly in support of rolling out rural broadband to our communities and really want to get behind this. There are many examples of park authorities that are proactive in working with communities to help make it happen, but we are concerned that these clauses could lead to an unnecessary adverse landscape impact because we believe that we can deliver rural broadband in national parks, without adverse landscape impact, if we all work together to that end.

Shaun Spiers: Obviously, there is a lot of detail still to be determined but, on the face of it, we are very concerned about environmental impacts. To start with, clause 7 deals with the issue of clutter in national parks and in areas of outstanding natural beauty. A lot of work has been done in recent years to underground overhead lines and so on, and this risks being undermined. There is also the point of principle that another purpose other than protecting beauty takes precedence in national parks and, indeed, that national parks come lower in the hierarchy of protection than sites of special scientific interest. We are very concerned about the symbolism of clause 7 and its real impact.

On clause 1, as I understand it, poor performance of local authorities is likely to be measured partly by the time it takes to make a decision, as well as by the number of decisions lost on appeal. A criterion of poor performance will not be letting in poor quality development, and that obviously could put pressure on local authorities to nod through the sort of developments they should not allow, which will have an impact on the environment.

As for clauses 12 and 13, no one wants to see vexatious applications for town and village greens, but the fact that communities can protect areas that they have used and loved for some time is something that we should celebrate, particularly given the relatively small number of applications for town and village green protection. The fact that any private developer who puts in an application can immediately stop a town or village green being designated really does put the private business interest over the public interest. We are concerned about the implications of that.

The last point is on clause 21. There is a lot that we do not quite understand about how that clause will work. But as for the idea that a developer will be able to take a major commercial development straight to the Planning Inspectorate rather than go through the local authority, we are not sure what implication that will have for local authorities that are trying to protect town centres and prevent outlying development from sucking life out of the town or destroying the beauty of the outskirts of the town. We are also not sure how the protections against light pollution, noise pollution and so on will play if they were taken out of the local planning system and given straight to PINS. All in all, we are very concerned about the potential for this Bill to have a seriously damaging impact on the environment.

Q318 Roberta Blackman-Woods: Thank you. You have raised a number of clauses, and we will probably come back to them later. I want to follow up something about clause 7. At an earlier sitting, the representative from the Broadband Stakeholder Group sought to reassure me about the possible impact on the environment of this clause by saying that a code of practice was going to be drawn up by the Department for Culture, Media and Sport, and that that would prevent inappropriate cabinets from being placed, and that it would be restricted to broadband only. Are you reassured? Should I be reassured by those comments or do you think that there are still grounds for concern about how clause 7 is constructed?

Shaun Spiers: All we can really look at is what is in the Bill, and it is not clear to me what problem the clause is seeking to address. What is the evidence that the current rules, which allow for a certain amount of infrastructure in national parks and areas of outstanding beauty, are holding back rural broadband? We do not see that evidence.

Dr Stone: We asked colleagues across the national parks and the Broads Authority—eight national parks and the Broads Authority returned information—of prior notifications in relation to the relatively minor telecoms infrastructure that we are talking about, although the Bill as drafted could be much more wide ranging. If we are talking about overhead wires and cabinets, however, then over the past five years we have received 392 applications or prior notifications, and 380 or 97% of them were approved. That prior notification process provides us with an opportunity to comment on, and to negotiate about, signing. The evidence is that the vast majority of those applications are altered, but some that are particularly sensitive can be altered in a way that minimises their impact. The way that it is at the moment, however, gives us that opportunity to engage properly. We argue that the evidence does not support the need for the legislation.

Simon Marsh: May I add to that? While a code of good practice would be very welcome, it seems to us that that is relaxing the rules, if you like, in favour of a weaker, voluntary approach, which does not seem to be justified in the circumstances. Also, the relationship between, first, the clause in the Bill, secondly, the DCMS consultation which we have not seen yet and, thirdly, the consultation from Communities and Local Government on relaxation of the prior approval rules is really not clear to us; nor is the territorial extent of those different things. As far as we can see, the Bill applies to England, Wales and Northern Ireland, but some of the other consultations may apply only to England. That is rather unclear.

Dr Stone: May I mention as well that SSSIs are left out of this proposal? SSSIs are a wildlife designation, which has different tests from a landscape designation. We argue that many of the things that we are concerned about are landscape impacts, as opposed to wildlife impacts, and therefore that we should include within the scope of it—or not exclude from clause 7—national parks and the broads legislation.

Q319 Nic Dakin: I come back to town and village greens. All the evidence that I have heard so far has tended to be supportive of the direction of travel within the Bill as currently drafted, but you express concern, Mr Spiers, about the possible impact on providing protection for areas of space that are treasured by local communities. Can you explain a little bit more about that?

Shaun Spiers: The most recent year for which we have figures says that there were 185 applications for town and village green status, so a tiny proportion of the number of developments going through the planning system. I think—sorry, I am losing track of what I wanted to say, and I cannot get it back.

Q320 Nic Dakin: So do you think that there is any evidence that registration of town and village greens is delaying the planning process, is an irritant or is an obstacle that should not be there?

Shaun Spiers: There is some evidence, and no one should be trying to use town and village greens as a vexatious way of stopping legitimate development. It is undoubtedly the case that we need development. The question is, what is the balance to be struck? As I see it, the Bill is proposing a system in which people will only know that a much-loved and much-used green space is under threat when someone puts in a planning application or it appears in a draft neighbourhood or local plan. We would prefer something more akin to Adrian Penfold's original proposal that when it is actually in a neighbourhood or local plan then you cannot put in an application for town and village green—or, indeed, you could add, as a trigger, when development has started on a site, which would address the point that the Minister made in the debate about a particular site in Norfolk. The way the Bill is drafted, however, more or less removes any possibility that anyone would be able to get town and village green status for a site, so it puts the balance far too much against local people trying to protect green space.

Q321 Nic Dakin: There is a real danger, in your view, that as it is drafted local people are likely to lose local amenity space, without going through a proper process of challenge.

Shaun Spiers: Absolutely, and the question for the country is, do you celebrate the fact that people can protect much-loved green space, or do you say, "This is the kind of vexatious thing that's getting in the way of the overriding need for development and growth at all costs"? I think there is a balance to be struck. The Penfold review's original suggestions struck a balance that I think environmentalists and developers could live with. This proposal more or less removes the right of communities to get protection for town and village greens, so it goes far too far.

Q322 Nic Dakin: Adrian Penfold, giving evidence this morning, seemed to suggest that he felt that the balance was still achieved in what was now in the legislation and, indeed, said that he thought the current proposed legislation was better than what he had originally—

Shaun Spiers: I heard that. It may be better from the perspective of British Land. The politics have changed. When Penfold made his original suggestions, it was in the context of a clear commitment to localism from the likely incoming Government and I guess he was proposing what he thought would be saleable in political terms. If all the pressure now is for development, then, of course, from a developer's point of view, it is better to sweep away any protection for town and village greens. Essentially, that is what the proposal in the Bill does. I still cling to some belief in localism and a belief that one of the purposes of planning is not only to achieve growth, but to protect the environment.

Q323 Nic Dakin: So you believe that unless the balance is tweaked back towards local people, as currently drafted the town and village green proposals are against the thread of localism that we ought to be supporting.

Shaun Spiers: Yes, because I do not think that people will know they have been using a town or village green for years, even for generations, until suddenly it is threatened with development and they discover that they cannot protect it any more. Essentially, you are almost removing the value of having such a status by the terms of the Bill, as proposed.

Nic Dakin: Thank you.

Q324 James Morris (Halesowen and Rowley Regis) (Con): Apologies for dragging us back to clause 1; I want your views on it. Mr Spiers, I think you made some allusion in answering a previous question about the criteria that should be applied to local planning authorities when judging whether they are performing or underperforming. Would you accept that local government planning authorities occasionally do underperform—that there is underperformance—and what would be your definition of underperformance?

Shaun Spiers: This is the big problem. How does one define underperformance? It is difficult to comment on a Bill unless we have some clear sense of what the criteria for underperformance are and what time period—

Q325 James Morris: What would be your criteria?

Shaun Spiers: I am not drafting the Bill, am I? I do not think I have criteria.

Q326 James Morris: I just wonder whether you have any thoughts about what the criteria might be. We have had discussions with other interested parties about what the criteria might be. I wonder whether you had a view.

Shaun Spiers: Among my criteria for underperformance would be local authorities that simply nod through damaging proposals because they have an understaffed planning authority or because they are prioritising economic development over all other considerations. They might be addressing targets for wind turbines but have not done a proper landscape capacity statement. They might not be protecting the town centre because they are looking to get extra rate relief—extra contribution—from admitting an out-of-town superstore, or whatever. There are lots of possible definitions of underperformance.

Q327 James Morris: Would you accept that there is a fundamental question about the timeliness of planning applications that emerge from local planning authorities?

[James Morris]

Would you say that, generally speaking, we do not have enough timeliness in planning applications decisions—that they take too long?

Shaun Spiers: No, I certainly would not say "generally speaking". The record of getting planning applications through in a timely fashion is quite good, but there are some local authorities that probably are taking too long. The question is, how do you address that? Do you address it by, as it were, encouragement—by ensuring that local authorities have the right resources—or possibly even by some sort of naming and shaming, or do you use the blunt instrument of saying, "We're going to take away your planning powers unless you decide stuff quickly, whether you decide it well or not"? The problem with what the Government are proposing is that if you are considering local authorities that lose on appeal, and the only people who can appeal are the developers, you are obviously making it much more likely that developments, whether good or bad, will be nodded through by a local authority. What would be consistent, if you are going to introduce the criterion of losing on appeal, would be to introduce some limited third-party right of appeal. That would at least make it balanced; but at the moment I do not really think the Bill is about the quality of decisions. The Bill is about encouraging local authorities to give permission, whether they should or not. The whole point of the planning system has to be that sometimes it is right to refuse development.

Q328 James Morris: Any other views?

Simon Marsh: Yes, could I just add to that? I think from an environmental perspective what we are really interested in is the quality of outcome, as Shaun has alluded to. That is something that it is quite difficult to provide criteria for; but if you were looking for a simple criterion I think others have suggested that the presence of an up-to-date local plan might be one such, so that would be my offering in terms of a suggestion.

James Morris: Thank you.

Q329 Mrs Glindon: Going back to clause 7, if you do not mind, the written evidence from the Campaign for National Parks points out the possible threat to the very important economic value of tourism by any intrusive telecommunications masts, or whatever. How valid a concern does the panel feel that is in relation to the clause?

Dr Stone: I will start. I think it is a valid concern in relation to the value of tourism in national parks. Tourism is probably the main contributor to the economies of national parks at the moment, so if we are talking about economic growth and rural growth then clearly tourism is a key part of that—and adding value to the tourism offer. The estimates are that there are something like 58 million visits to national parks a year, and that there is £4.3 billion-worth of tourism income to national park economies through that; so we are talking substantial numbers. They are a major attraction to people.

When you ask people why they go to national parks, the No. 1 attractor and draw is the landscape, but at the same time tourism businesses and people who are visiting national parks want access to broadband—access to modern telecommunications. It is not a question of—well, we would like to say you do not need to sacrifice that in order to achieve good outcomes in terms of communications. The way to do that is not necessarily to have the sort of legislation that is proposed here, but to use the current facilities to encourage other mechanisms for making sure that park authorities and the operators work closely together in designing and developing the schemes.

We can bring resources to bear. We can bring resources from the local community, in the case of supporting underground cabling if that is required. As I have already said, in the majority of cases proposals for overground cables and cabinets are not resisted anyway. All I would say is that we believe that this, as currently drafted, is unnecessary, and if it were to have the impact of adding to that kind of clutter within the landscapes, there is a potential for it to have an adverse impact on the tourism economy.

Shaun Spiers: The CPRE definitely shares MPs' concern on this. It is not only to do with the clutter that might arise from the effects of the clause. It is the signal that it gives that the beauty of the national parks is somehow less of a priority than we have all been given to understand for some time. The electricity companies have in recent years spent more than £20 million undergrounding overhead wires from little wires on wooden poles—not pylons—working with Ofgem to do that, in order to reduce clutter in the national parks. This gives a signal that in some sense that is all much less important, and the other priorities will trump the landscape and tourism, and so on. It is very worrying.

I should also say that, in November last year, the Government gave a categorical assurance, following the consultation on overhead telecommunications in the national parks, that there would be no weakening of protection; so a year on it is disappointing that this proposal is coming out of the blue, really, following quite a detailed consultation.

Q330 Andrew Stunell (Hazel Grove) (LD): I could comment on the box issue, but perhaps I will go back to the point I was going to make, which relates to the village green point that Mr Spiers raised. You seemed to be somewhat dismissive of the impact of every planning authority having a local plan, which is required under the national planning policy framework, with the opportunity for neighbourhoods to develop neighbourhood and parish plans and the opportunities that that would give for village greens to be listed and registered and signalled. You did not comment on the provision in the Localism Act 2011 for the capacity for individuals and neighbourhoods to list areas of local amenity value. I was a little dismayed by that, because you seemed to be thinking that it was only a kind of handbrake-turn solution that would work, when surely what we are trying to do here is to identify and embed areas of amenity value to localities at a much earlier point in the planning system and the decision-making process.

Shaun Spiers: CPRE is a great supporter of neighbourhood planning. We have been very involved in the CLG programme to promote it, as you know. However, it is probably unrealistic to expect that, just in the process of a local plan, any given neighbourhood will have been able to identify a space that might have been allocated for a development in that local plan. The

first that they are likely to know about it— unless you conceive of a picture where all neighbourhoods are closely involved in working to develop the local plan, which is obviously the Utopia we would all like to see, but that is unlikely to be the case—is when the local plan is drawn up. A piece of land will be allocated for development in it, and that is likely to be the first that local people know about it.

The other scenario I pointed to was simply where a developer puts in an application to develop something that people regard as a town or village green and they lose the right to get that designation as soon as the application has gone in. So we are very concerned. Again, I do not know why the balance that was proposed in the Penfold review is unsatisfactory. That seems to be something that could unite, as it were, both sides of this; it would prevent vexatious campaigns to designate an area that legitimately should be developed, but it would also provide protection for much loved green spaces.

Q331 Andrew Stunell: You do not think that the provision in the Localism Act for neighbourhoods to list areas of local amenity value is going to do the business?

Shaun Spiers: We do not. We think it is too complex and we have seen no evidence that it is likely to be used, but it is early days and it might be. However, we have not seen any evidence of those listings yet.

Q332 Andrew Stunell: But I am not sure what evidence you would be expecting to see.

Shaun Spiers: Evidence from our branches, which are involved in planning decisions up and down the country. As far as I understand it, people are finding it quite difficult to use that provision. I can get back and write to you about it if that would help, or I could write to the Chairman.

Q333 Andrew Stunell: Wearing another hat I would be interested to get some feedback on that. As I see it, the provision is tidying up where we have duplicate provisions for getting village greens on the statute book, for want of a better word. The provisions that are being taken out have been replaced by what is in the Localism Act and by the capacity that neighbourhoods and parishes now have to develop plans. I know that that is a process that the CPRE is directly engaged in. It would be really helpful to the Committee to hear more of the case that you are deploying, which cuts across my understanding of the reality on the ground.

Shaun Spiers: Where a neighbourhood is closely involved in neighbourhood planning, they will be able to identify a potential town or village green and put it in the neighbourhood plan. The reality is that at the moment there are relatively few pioneers of the more than 10,000 neighbourhoods across the country that are working hard—and it is quite hard work at the moment—to develop their neighbourhood plans. I hope it will become more popular. I hope it will become mainstream, but at the moment there are many more potential town or village greens than there are neighbourhoods that are closely involved in neighbourhood planning. There are relatively few pioneers who are leading in that process at the moment. I hope that in five years' time there will be a lot more, but there are not now.

Q334 Andrew Stunell: But the listing of local amenity value land is not dependent on having a neighbourhood plan. That is a listing process.

Shaun Spiers: No, but it is dependent on having an engaged local community that understands some of the planning rules and that is going to identify a bit of space as something that should be designated. Until a proposed development hits you, or until you start getting engaged with neighbourhood planning, it is a sad, regrettable fact, but I am afraid that most people do not spend a lot of time thinking about the planning system.

Q335 Mr Raynsford: May I bring in Mr Edge? You have been sitting patiently. I thought your written evidence was very thoughtful, and I would like to give you an opportunity to expand on it. First, you make the general point, if I am correctly interpreting your evidence, that periods of reform are often followed by periods of uncertainty while the reforms bed in. Such uncertainly should, therefore, be kept to a minimum. That seems to be a general principle. Then you go on to talk about the difficulties that onshore wind developers have in getting consent, and you say that you therefore might be tempted to be sympathetic to the Government's approach of redirecting applications from poor-performing authorities. However, you then say that you are not sure that this is the right way to go about it and you think that some sort of incentive might be the right way forward. Could you elaborate on all that and tell us how you see the development of onshore wind happening, which clearly is important to your members?

Gordon Edge: Absolutely. Our members would like nothing more than to have a faster, more dependable planning system. We are therefore sympathetic to the general thrust of Government trying to help in that regard. In clause 1 in particular we think that it is much more about the resources that are available to planning departments and the skills and expertise they have. We have discussed with Government over a number of years a number of things that could be done. For instance, back with the renewable energy strategy of 2009—a whole Administration ago—there was a suggestion that there might be what we termed a flying squad of experienced planners with knowledge of onshore wind development who might be able to support local planning departments going through those processes. That came to nothing, particularly with the comprehensive spending review of 2010.

There should be as many carrots as sticks. Clause 1, in particular, is a strong stick. Certainly, we would not want it applied except in rather extreme circumstances. Yes, there are many local authorities that take a long time to deal with onshore wind applications. I cannot think of many that were completed within the 13-week statutory period—pace Mr Spiers's assertions. We see it as being a very slow process for our members, but we do not think that wielding big sticks and saying, "We are going to take it away from you," is the right way of making it happen faster. If nothing else, it may just swap one bottleneck—the local planning authority—with the Planning Inspectorate, which is already under pressure dealing with local plans under the NPPF, potentially under clause 21, and further applications under the Planning Act 2008. Unless the Planning Inspectorate was massively resourced, you might just end up having a delay there instead.

Q336 Mr Raynsford: May I now turn to Dr Stone and the national parks section of clause 5? You have highlighted in your written evidence a concern that clause 5 could inhibit the provision of affordable housing in national parks because of restrictions on the use of section 106. Could you please elaborate on that and tell us what the evidence base is for those fears? What representations have you received from your member parks?

Dr Stone: Certainly. The majority of national parks have planning policies, which are really there to help promote affordable local needs housing. We all have a housing stock, if you like. The majority of local people have relatively modest earnings, so for a lot of local people purchasing on the open market is not affordable. The development opportunities are often constrained to specific geographical regions. The majority of us have a planning policy based on a rural exceptions approach to planning. For a housing application to be approved, it would have to meet affordable local needs criteria and be occupied by somebody who meets those criteria. It is then secured through a section 106 agreement. I am not necessarily thinking about housing provided by a rural housing association or a housing provider, but I am talking particularly about individuals wanting to purchase a small piece of land for their own home, which they would essentially self-build. That is what we are talking about. This is where the current clause 5(1)(5)(d) refers to single dwellings. Our concern is that because they are exception sites, the potential developer and occupier is able to purchase that land at a relatively low price, because it has little hope value.

There are two things operating. The person who sells them the land, if the individuals have to buy a plot of land, has reassurance that a section 106 agreement would preserve the affordability of the property, so it would not be a question of somebody building a home and ultimately selling it on an open market and making an exorbitant profit that the original landowner would have forgone. It works both ways: it enables a landowner selling a piece of land to feel reassured that it will meet a local need, and it enables a purchaser to purchase at a relatively low cost. That is critical to the viability of building on the site. It is by retaining the full section 106 —that occupancy—that potentially makes it available in the future for other people who meet the local needs criteria, so that you build up a stock of affordable homes. I am sure that it is not the intention of the Bill, but we are concerned that it could have the potential unintended consequence of making those much more difficult to achieve. We would suggest some amendments; for example, exempting article 1(5) land or retaining the section 106 agreement as it stands for a single dwelling, as well as allowing modification for more than one dwelling, or limiting the application to more than 10 homes, so that you are not leading to a potential loss to the affordable housing stock of smaller developments in these very rural locations.

Q337 Mr Raynsford: I understand some of your concerns, but I am a little puzzled about your first example, because as I understand it, the viability of the scheme would be dependent on the agreement that the property would be transferred at less than market value. If there was a doubt about viability, that would not argue the case for removing the obligation, which would open the property to a higher value.

Dr Stone: Exactly. We do not want that to happen. The viability would be that it is viable until I cannot get the plot of land and I have to pay a bit more for it. If there is a prospect of somebody getting a permission—it only has to happen once—and is then able to convince through this process that it was not viable and should be open market, it essentially means that you lose confidence in the system.

Q338 Mr Raynsford: I now see the risk. Your proposed safeguard against that—the amendment you are suggesting—should be either an exemption of rural exception schemes or a combination of an extension of the period during which the planning permission would be viable.

Dr Stone: If it is small-scale development—I have suggested 10 homes here—there should be exemption of that clause. That clause applies to very small scale.

Q339 Mr Raynsford: You say in your written evidence:

"We suggest that a pragmatic solution would be to remove the statutory moratorium of five years for applying to renegotiate section 106 agreements, thus enabling applications at any time, while also allowing local planning authorities the option of maintaining the section 106 obligations without modification."

Dr Stone: Yes, but that is the critical bit. At the moment, the Bill does not allow for you to retain it without modification. In the case of a single, sole dwelling, if it is not viable, you have no choice but to remove it.

Q340 John Glen: For clarification on the current position where some 106 agreements were formed on the basis of economic conditions that no longer exist, to what extent do you see existing 106 agreements that are in place acting as a disincentive to development in the current climate? Do you see any case for modification or change? Or do you not see that as a reason why development is not taking place?

Dr Stone: Not in our context.

John Glen: Not in your case, but more generally across the panel.

Shaun Spiers: Local authorities are renegotiating section 106 agreements all the time.

Q341 John Glen: But are they with sufficient speed to deliver the outcomes in terms of housing?

Shaun Spiers: It depends what the outcome is. If the test is whether the scheme is viable with its current section 106, and viability is defined by the developer, you are going to end up with very little community gain or affordable housing. The specific process we suggested in our submission is that instead of requiring a developer to develop a certain number of affordable houses, they should be required to give the land for the affordable houses to be developed. The Government said that they will step in and provide funding for the affordable houses, but it is actually the land that is scarce.

Q342 John Glen: I recognise what you said, but if their assessment of the future economic value of that land is higher than that of a revised 106 agreement it would not work, would it? They would not want to give

that up if they thought it could be worth more at a future date. They would be interested in what their obligation is under a revised 106 agreement.

Shaun Spiers: This is the whole point of having section 106, is it not? That is how you get affordable housing built. If you do not have some means of encouraging developers to develop affordable housing or to give the land up for it, you will not get any affordable housing, you will just get market housing.

Q343 John Glen: What I am challenging is the assumption that your way of doing it will actually deliver the change in behaviour to deliver the social housing that you wish to see.

Shaun Spiers: What is the alternative? Is it just to say to developers, "You don't have to develop any affordable housing"?

Q344 John Glen: You do it on a different scale, to recognise the unviability of where they are at the moment. Therefore, the obligation is less onerous.

Shaun Spiers: I guess I would question the unviability. I think that all the evidence is that house builders will build the number of houses they feel they are able to sell, and that is to do with the market and not to do with planning. If you make it easier for them, they will make more money but they will not build more houses. There is a role for a relatively muscular policy framework to encourage developers to develop affordable housing. I do not see what is wrong with that.

Q345 Paul Blomfield: Could I follow up on the point that Mr Edge made? It seems fairly fundamental and we touched on it in an earlier sitting? The assumption in clause 1 is that if decisions are pushed up to the Planning Inspectorate, they will in some way be fast-tracked. Your concern was that that potentially just creates another blockage. From my understanding, the Planning Inspectorate is somewhat slower than councils in considering appeals—over the past year, for example. You made the point that without additional resources we will see no hastening of the system at all, and potentially a slowing down. Are you aware of plans to provide additional resources to the Planning Inspectorate?

Gordon Edge: Not that I am aware of.

Q346 Paul Blomfield: Are other members of the panel aware of such plans, or do they share Mr Edge's concern?

Shaun Spiers: There's a leading question.

Q347 Paul Blomfield: You would concur with Mr Edge that there is potential not to resolve the speed of consideration of decisions but to create a new blockage.

Shaun Spiers: I am sure that if the Planning Inspectorate is given more responsibilities, resources will be found for it. The purpose of this is speed, and I am sure that the Planning Inspectorate is sufficiently well resourced to take those decisions. Our concern about passing decisions up to the Planning Inspectorate is more about the potential for politicising the Planning Inspectorate. The reason, particularly in the area that Gordon Edge has been talking about, such decisions are so difficult is because they are innately political. I do not think you will get consent for difficult development by passing it up to what is considered an unaccountable quango. These are political decisions, and should be taken by politically accountable bodies.

Simon Marsh: I do not think we have a view on the point you raise. The key issue for us is just to ensure that whether the process is with the local authority or with the Secretary of State via the inspectorate, there are still the same opportunities for the community and for third parties, such as ourselves, to engage with that process.

Q348 Paul Blomfield: Do you think that local communities would feel there was the same opportunity to engage if those decisions were made at a national level?

Simon Marsh: Possibly not, but we have not seen the details yet to know whether that would be the case or not.

Q349 Dr Coffey: When the NPPF came out, the CPRE was painting a picture of doom that half the countryside was under threat from excessive development. I get that feeling again this time. I am thinking in particular of broadband. Colleagues have seats in the Peak district. I have about 40% of the AONB at Minsmere —the RSPB—and, frankly, my residents really do want broadband, and mobile, fixed, so I am a bit concerned about all the negativity spouted about broadband clutter. The president of the CPRE lives in Islington. He has probably got broadband. Whoopee doo. We don't. I am just very concerned about all the negativity. If you just take the evidence this morning from Mrs Learmonth, BT alone has now not installed 2,500 cabinets because of problems with planning. It has just withdrawn them from its plans. Is it not sensible just to say, "We need national infrastructure. Let's get on with it."? Why, in particular Dr Stone and Mr Spiers, do you feel that we should not have the permission to go ahead with it?

Dr Stone: I will speak first because the national parks are totally in favour, wanting and advocating. We would love to be engaged with BT talking about rural broadband roll-out on Exmoor. We are working with the Broadband Delivery UK programmes. National park authorities are leading in terms of the rural broadband fund bids for working with our communities in our areas. We want it to happen.

I want to stress that it is not a worry about not wanting it to happen. It is very much, "Let's make it happen, and let's all work together to make it happen." Let us make it happen so that it does not have an adverse impact that it need not have. We can show you examples. They are not necessarily in relation to overhead wires and cabinets, but in relation to masts and telecoms masts.

Airwave communications have been rolled out across all the national parks, giving very broad coverage for the emergency services with mobile communications. That has been done successfully, with one or two hiccups but essentially it has been delivered. We need to learn the lessons from that, because there are lessons to learn from it, including the general lesson that it is possible, and how we can learn in detail to make sure that we overcome any possible obstacles. All we are really saying is that we feel that the current set-up is not an obstacle

to engaging. We want to engage and get on with the job. We want to make sure that our communities get the broadband that you are talking about. We really do.

Shaun Spiers: I echo that. I see no evidence that the current rules are restricting the roll-out of broadband unnecessarily, but the proposal in the Bill gives a real signal that Ofgem, the energy companies, the national park authorities, the National Park Society and so on should cease all their efforts, worth £20 million in the last few years, to underground existing lines. That comes a year after the Government gave a categorical assurance that they would not weaken the protection for national parks and areas of outstanding natural beauty. It is unnecessary and on the face of it, appears to be deeply philistine.

Dr Coffey: I do not see why this particular clause all of a sudden means that ugly, obtrusive broadband infrastructure will be cluttered everywhere. Why do you anticipate almost the worst scenario? That is what I am struggling with. It seems an overreaction.

Shaun Spiers: We can only talk about what the Bill says. The Bill does not give the sort of assurances that you are giving.

Dr Stone: The Bill does not relate specifically to overhead wires and cabinets, for example. It is much broader than that. I have already said that 97% are approved, but the point of the existing process is not because a small percentage is not approved; it is because the process enables us to engage and negotiate so that, when these services are delivered, they are delivered in the best possible way. We are keen to look for solutions here. We are talking about something that is essentially uneconomic in rural areas, which is why it is not being rolled out now. Therefore, we want to work with these companies to facilitate the roll-out. We just do not think that clause 7 is necessary or actually helps in any way. That is our concern. The potential of clause 7 is for the company to say, "Well, actually, we don't really need to engage with that lot—we can get on with it." That situation could lead to the adverse, unnecessarily.

Q350 Dr Coffey: If I could move further on, if you could speak to some of our offshore energy people, you would hear that they have had to put a lot of work in, doing different things about wayleaves and different permissions here and there, but we know that it has to be done. I am not saying that it should not be done in an appropriate way; but, again, I do not see why this clause stops good code of practice happening, as opposed, perhaps, to the concerns that you are going to have improper development.

Dr Stone: I would put it the other way around and ask why you think the clause is needed unless it could lead to something that would not happen otherwise. It is about—

Q351 Dr Coffey: It is about hurry up, isn't it?

Dr Stone: Absolutely. The consultation period is 56 days, as I understand it. We would be very willing to enter into planning performance agreements and protocols, operating with the operators to facilitate rolling things out. As I keep saying, we want this to happen. We want it to happen yesterday, and we therefore do not believe that we need to wait for the Bill to go through. We could be talking now with those companies about how broadband can deployed in national parks.

Q352 Roberta Blackman-Woods: As a Labour party person, I am always interested in clause 4 debates. We have not had one yet, but I think that this afternoon is the first time that clause 4 has been raised. It has made me think that perhaps we are missing something. Do you think that some safeguards need to be put into clause 4 to ensure that necessary information is obtained and that reasonableness is not interpreted in such a way that we may actually miss essential information? What should those safeguards be?

Simon Marsh: At the present time, I do not have a view about what the safeguards might be. It is an issue that the clause may just generate a lot of debates about what is reasonable and what is not, but my starting point is that the clause is not necessary at all, because it is not fixing the problem. I have described how you might fix it for the major types of development. Clearly, there may be issues with smaller-scale development that is not caught by the environmental impact assessment regulations. That is partly about the ability of local authorities actually to know what to ask for in the first place, but more could be done to encourage them to engage in the kind of pre-application discussions that sort out those issues before you get to submitting a planning application.

Gordon Edge: We are generally sympathetic to the thrust of this, because one of the classic delaying tactics of local authorities that are not willing to make a decision, particularly about onshore wind farms, is to ask for information again and again. We share the concern that what constitutes reasonable will end up being just another hold-up and snarl. We suggest that you could have a third party appointed, something like an ombudsman or some other arbitrator, who would be able to say, "That is reasonable, and that is not," without it having to be a long, drawn-out legal process. We would also certainly need the Government to produce guidance early on in the process that says what is reasonable and what is not, because at the moment it is completely unclear—reasonable covers a wide range of possibilities.

Shaun Spiers: The NPPF has a very good passage on this, which demands that local authorities are reasonable and proportionate in the information they require. The whole thrust of the NPPF and the debate around it was that it would usher in a kind of culture change in local planning authorities and empower them to improve their decision making and be more imaginative about place making and so on. It seems rather early to be giving up on the NPPF process and starting to impose requirements through legislation, rather than working with the NPPF and letting the undoubtedly quite difficult cultural changes in local planning authorities take place.

Gordon Edge: To come back to my earlier point, better resourced local planning departments will be able to work out what information they need and know when they have it, so more resources would help.

Q353 Roberta Blackman-Woods: To go back to clause 7, we are getting evidence that is contradictory. This morning, the Broadband Stakeholder Group asserted very strongly

—I think it has been repeated this afternoon—that there is a significant hold-up of the roll-out of broadband, especially to rural areas, and that is totally the fault of planning, yet we are hearing that there is no real evidence to support that. Can safeguards be put in the Bill, so that we have more reassurance that the environmental quality of an area will not be negatively impacted on by huge cabinets? Unlike the hon. Member for Suffolk Coastal, I always think that it is best to consider the worst scenario and have it covered than just cross our fingers and hope that it does not happen.

Simon Marsh: The problem is that the safeguard is the prior approval process. Essentially, these types of developments are permitted developments that serve the deregulatory process. The prior approval regime gives the local authority the opportunity to make comments about appearance and siting. The problem that we have with the clause is not really about broadband per se, but about the signal that this is sending out that these protected areas, which are some of our most cherished landscapes, are somehow worthy of less protection that they have enjoyed in the past. I welcome the fact that it does not include sites of special scientific interest, and I recognise that it is mostly a landscape issue, but nature is not just confined to sites of special scientific interest.

Dr Stone: Obviously, I can only comment about experience in national parks, and because of the nature of national parks—they are sparsely populated areas often in very difficult terrain—there is a particular challenge about rolling out these communications technologies in those circumstances. There is a practical challenge and an economic challenge. I was surprised by that because we have just not been inundated with telecommunications companies knocking on our doors saying, "Let's roll out rural broadband." Quite the opposite. We would love to be in that position where it was happening. The economics of it mean that we have to do what we can to encourage it and not to put it off. That is our experience in national parks. We have asked for the evidence of delays, particularly any evidence that relates to national parks. I have asked colleagues for examples that they know of, and we just have not been able to come up with any and we have not been given that evidence. I can only talk about national parks, but in our context, I would say that the current process is not part of the reason why it is not happening in national parks.

The Chair: If there are no further questions, let us move on to our next panel of witnesses. I thank our witnesses for their time on behalf of the Committee. We will now hear oral evidence from the National Trust, Friends of the Earth and the Campaign for National Parks.

Examination of Witnesses

Ingrid Samuel, Naomi Luhde-Thompson and Ruth Bradshaw gave evidence.

4 pm

Q354 The Chair: Before we ask the first question, can the witnesses briefly introduce themselves to the Committee?

Ingrid Samuel: My name is Ingrid Samuel, and I am from the National Trust.

Naomi Luhde-Thompson: I am Naomi Luhde-Thompson, and I am planning and policy adviser at Friends of the Earth.

Ruth Bradshaw: I am Ruth Bradshaw, and I am policy and research manager at the Campaign for National Parks.

The Chair: I remind everybody that this session will end no later than 5 o'clock.

Q355 Roberta Blackman-Woods: I welcome the panel. Can you tell us whether you think the provisions of the Bill enhance or undermine the concept of sustainable development, which is at the heart of the national planning policy framework?

Naomi Luhde-Thompson: Thank you very much for the question. Essentially, we think that this Bill does not tackle the main issues. If it is trying to tackle the economic problems that this country is facing, it is doing so, in a way, as it looks towards growth; yet it does not look for quality of outcome. As the CBI has said, the UK's green business is very important to the economy and has been a growth part of the economy. If you wanted to grow, for instance, green technology in the construction sector, you would put provisions within planning to encourage that kind of development and to make sure that developers who are using green technologies have an advantage over others. That is one example of how a growth and infrastructure Bill that was looking for quality of outcome and for sustainable development could perhaps address that.

The other thing about the Bill is that, in terms of environmental impact, quicker decisions do not necessarily mean better decisions. For major applications in particular, one needs to spend a bit of time in order to get quality of outcome. I do not think that speed is going to be the primary factor there. What you should be looking at is what the development is actually delivering. The impact assessment says that promoting sustainable development will be done

"by creating a more positive environment for investment, which is beneficial for communities."

Sustainable development in the national planning policy framework is discussed in terms of social justice, environmental limits and the sustainable economy. So there are two different concepts here of what sustainable development is. The Bill is in favour of approving quickly but not necessarily looking at quality.

Ingrid Samuel: Obviously, last year, a great deal of the debate around the NPPF, as we know, was around the importance of sustainable development and what actually constituted sustainable development. We arrived in a place where the Government and the Prime Minister in particular agreed with the National Trust and others that planning itself was an essential tool for balancing a variety of land-use interests in pursuit of an overriding public one and that a strong, effective planning system is absolutely vital for making sure that the right things get developed in the right places and the wrong things do not get developed in the wrong places. The persistent myth that planning is an obstacle to growth is evidenced in some clauses in the Bill. We feel that the planning system and the NPPF in particular need time to bed in: local authorities are creating their local plans, and we need time for that to bed in.

Ruth Bradshaw: We have heard quite a lot of discussion about clause 7. Members of the Committee are probably aware that that is our main concern in the Bill. Commenting on that clause in particular, I would say that it does not support sustainable development, because it effectively undermines long-standing environmental protections in the pursuit of economic growth. We very much support the view that it will potentially have a damaging effect on economic growth in rural areas if it deters people from visiting.

Q356 Roberta Blackman-Woods: It is interesting that you have all, in some way, mentioned growth. Would you support the assertion, which underpins this piece of legislation, that the planning system is holding back growth? If it is, do you think that the provisions in the Bill are the right ones, or do you think there is just a problem with it?

Naomi Luhde-Thompson: I suppose it depends on what you mean by growth. Are you talking about growth in GDP, which does not necessarily equate to a sustainable economy because you are not necessarily doing those things that you need in order to deliver well-being, jobs, security of income and social justice, or are you talking about building more houses? In the case of the latter, as the Home Builders Federation brought up last week, there are many other factors restricting the building of properties. Those in greatest need will not to be able to access a home through the market-led system, so there needs to be more social and affordable housing. One has to unpack a little bit what one means by growth.

Ingrid Samuel: There is a danger in assuming that deregulation is the only route to achieving growth. The problem is that you potentially create more problems than you solve. One of the outcomes of a piece of research that we did last year with the CPRE and the RSPB was that the economic benefits as opposed to the costs of planning really have not been properly recognised, explored and taken into account—the certainty that is provided to developers.

Ruth Bradshaw: We would not agree that planning is causing a barrier to economic growth. We have heard previously the statistics about the high percentage of applications or prior approval requests for telecommunications infrastructure that are granted in national parks, so there are clearly other factors in terms of the economics of delivering broadband in those areas. In that specific example, there is the fact that there has been a delay in getting state aid approval. It is not planning that is delaying implementation.

Q357 Nic Dakin: We have heard different views on whether the proposals in the Bill are a positive or a negative for town and village greens in relation to development. Have you got views on that?

Ingrid Samuel: As an organisation that grew out of the movement to protect public open spaces, we would be very concerned about anything that had the potential to diminish protection for town and village greens and public open spaces, or to reduce the opportunity for local community involvement. One of our concerns is that it is quite difficult to predict the impact of these clauses on public open spaces and towns and village greens. Will they reduce the opportunity to register such spaces, or will landholders be more willing to allow community use of their spaces without the risk of registration?

In clause 12, it would be useful to add something about publicising the fact that a statement is made by a landowner to give people that opportunity—they have a two-year opportunity to seek to register the town or village green—and to provide them with the awareness that the clock is ticking and they should be thinking about that.

In clause 13, we recognise that there will remain opportunities to engage through the planning system in connection with these open spaces. In general, however, planning authorities are not really geared up to assess when looking at planning applications whether land should be registered as a village green. There is a danger that some of the trigger events and the points at which we cut off the opportunity for communities to make their case disadvantage them.

Naomi Luhde-Thompson: I think it sends the wrong signal. Town and village green spaces are incredibly important to sustainable communities. There has been a report by the adaptation sub-committee, which is a sub-committee of the Committee on Climate Change, looking at adaptation. In urban areas, in particular, one of the big issues that you need to deal with is urban heat. One of the ways that you can mitigate against that is by having urban green space.

The committee found that in the local authorities that were surveyed, almost all of them had lost urban green space over a number of years. The risk is that that sends a signal that it is easier to build on those spaces, and in fact, what we need to be doing, if we are looking at developing sustainable communities, is saying, "We need more green space in urban areas. We need more green space for sustainable communities, and therefore, we need to send a signal that this is something you should be planning for. You should be actively looking at that and assessing whether those sites can provide biodiversity value." All that sort of stuff needs to be promoted, and the signal here is not one that would chime with, for instance, the adaptation needs.

Ruth Bradshaw: We as an organisation have not taken a view on the town and village green issue. This is a general point that perhaps applies to other clauses in the Bill, because so much of this is about things that have been introduced without very much—or anything—in the way of prior consultation. It is hard for small organisations such as ours and for the general public to really have an opportunity to understand the implications of some of the measures. It would be good to allow more time for proper consideration of some aspects.

Q358 Nic Dakin: Is there a way of dealing with the vexatious problem but continuing to maintain the protection of designation? Can you see a way to improve what is currently there to provide protection for green and open spaces through designation, while avoiding the vexatious problem?

Ingrid Samuel: I have not seen evidence of how big a problem that actually is. There is an interesting question about what is vexatious. To some people who see the space that they use and love threatened, that is a real reaction, a real risk and a real loss to them. Whether that is a vexatious action or not is questionable.

Naomi Luhde-Thompson: You have to see it in context. It is so site-specific that it is one of those things that is difficult to deal with. What may have happened in a situation is that people did not realise they were going to lose that piece of land, and that land might be very important for them. The developer may see it as vexatious but for the community who live there, whose space it is, it is obviously not something vexatious for them. It will have a big impact on their local community.

In terms of planning, it is very important to understand that the local plan is a difficult process to get involved with. Friends of the Earth does quite a bit of training to try and get communities—we also do training with councillors, actually—to understand the local plan process and the importance of getting involved, but it is quite difficult to get people involved in something, and it is particularly difficult to get involved in something if you then see it set aside in the future, so you have to value that contribution and input.

Ingrid Samuel: Something can possibly be done in terms of looking at the individual trigger mechanisms that put a stop on registering something as a town or village green. Considering each of those individually, there are some that may be fine. For example, when a local plan is finalised and agreed, that is one thing. If we are stopping any opportunity right at a consultation stage, which is the first that a local community have heard of it, or when a planning application is first lodged, which is the first time that a community have heard of it, and it is already too late, those sorts of things need to be considered. Therefore, perhaps looking individually at trigger mechanisms and how that would work in practice, and whether it unduly disadvantages communities in favour of developers, is something to think about.

Q359 Dr Coffey: Last week, we heard from a housing association how it had built some houses, and after people were living there, somebody tried to register it as a town and village green, which seems somewhat ridiculous. Where I used to live, I am delighted to hear again that a blocking application was turned down, because that was sensible; the land had never been used as a town or village green. May I ask the National Trust in particular to tell us about your experience of using the planning system, the delays that you found, and the cost of excessive information requirements? I am thinking of quite a lot of work that the National Trust has to do. Could you say a bit more about that?

Ingrid Samuel: Certainly. We are very active in the planning system, both as a landowner and as an organisation that protects and cares for special places and is concerned about the impact of other people's developments on our special places. Similarly, we have found that, in terms of the planning system and the amount of information required from us, we have had moments when we have been asked to present a great deal of information, possibly more than we thought was reasonable, but equally we have had many times when not nearly enough information was being offered to make good quality decisions. We know of a few cases right now where local authorities, because they are concerned about speed and pushing through applications as quickly as possible, are making decisions on the basis of very slim evidence indeed.

Q360 Dr Coffey: Can you name them?

Ingrid Samuel: They are in the process right now. We have one in Hampshire—in Stockbridge—where the case is about a solar farm proposal on a highly visible space in the hillside right next to a grade II listed building and some National Trust property. The local authority has chosen to make a decision on the basis of very limited information and has also withdrawn its initial objection because it is concerned that it will go to appeal. Things like that are already happening. We are concerned about clause 1 in particular and the proposals that have been suggested that speed and overturning decisions on appeal are the type of things that will mean that the local authorities are designated and power taken away from them and given to PINS.

Q361 Dr Coffey: That was not about information or cost, but whether the council felt its decision would be overturned by the Planning Inspectorate. I know Test Valley.

Ingrid Samuel: My point was that it is about a lack of information and that the local authority was feeling pressured into making a decision without pushing back for more information in order to look carefully at everything, balance everything and make the right decision.

Q362 Dr Coffey: I am not convinced by that answer, to be honest.

Naomi Luhde-Thompson: May I add an example about lack of information? For instance, Friends of the Earth is involved at the moment in some of the shale gas test drilling exploration in Lancashire. If you look at the applications, there is very little information on the conditions about impacts and contamination on groundwater. There is one PDF diagram, which has a cross-section of the drill and how it goes through the different geological formations, but there is absolutely no information as to how that can impact the groundwater.

Q363 Dr Coffey: That is offshore, not onshore. It is not a local council doing it.

Naomi Luhde-Thompson: It is onshore. It is a local council.

Q364 Dr Coffey: It is a local council. Which one?

Naomi Luhde-Thompson: Yes, it is test drilling. It is Lancashire county council. There are four applications there at the moment. We have got various local groups up there who have asked us for a bit of help. The point is that there is not much information and because it is a novel technology there is a real difficulty. People do not understand what the impacts might be. They just have a cross-section diagram of a 3 km drill, and there is a lack of information there.

Q365 Dr Coffey: Is the council not asking for it? I am trying to get to the point. You will get complaints; I have had complaints as an MP. People ask for loads of information and then in the end it does not feel like much of it is being used. That is the issue we are trying to understand. Are we asking for information overload, which costs a lot of money, but does not actually have a consequence on the decision? That is what I am trying to get at.

Naomi Luhde-Thompson: It is different for different applications. That is one of the issues. There has to be a certain exercise of judgment. There has to be reasonableness. Sometimes there is a lack of skills in the planning office, or a lack of expertise. They do not actually know what

they should be asking for, which sometimes means that they are not asking for enough. At other times they are under pressure, so, perhaps to cover their backs, they ask for more. Essentially, if you are trying to get at good decision making, you need the right information to make a good decision. That is what we need to be focused on in the clause.

Ingrid Samuel: I agree, whether that is got to by guidance and culture change and all sorts of other things or whether it needs statutory force to make it happen. A reasonable amount of information is already in the NPPF, of course.

Q366 Dr Coffey: So you do not feel you have been asked for too much information provided at high cost in a single application that the National Trust has ever made. That is what I am trying to get at. I do not mean you are complaining about—

Ingrid Samuel: Yes, I understand that, but it is a case-by-case basis, isn't it?

Dr Coffey: Well, I am asking you.

Ingrid Samuel: You will always have cases, I suppose, where you might feel that you are being asked to give too much, so yes, I could not say that there has never been a case where the National Trust has felt that it has been asked for more information, but whether that means that we ought to put a great deal of pressure on local authorities and suggest that they should not ask for what they think is reasonable is a different question.

Q367 Dr Coffey: Finally, on broadband infrastructure, a lot of rural communities are concerned. There is great news today: we have been given state aid clearance, so we can finally start getting on with our planning permission applications. Communities are concerned that they particularly do not want to see long planning application processes now getting in the way of their faster broadband. Do you think that all cables need to be underground, even if it stops communities getting the benefits of super-fast broadband on the move as well as in the home?

Ruth Bradshaw: Infrastructure needs to be designed in a way that is appropriate for the setting. In many cases in national parks that may mean that undergrounding is the more appropriate option. That is why we are keen to see the existing processes continue, where local planning authorities are working closely with the developers to ensure that infrastructure is designed in a way that is appropriate to the national park. We will not then have the potential economic disbenefits detracting from these landscapes that have specific protection under legislation that has been in place for many decades.

The other thing I would like to say on that is that, as was touched on earlier, there is evidence of people's willingness to pay for the undergrounding of overhead lines in national parks and AONBs. That is the process that is already in place for the electricity industry. There is an allowance of £60 million for the current five-year period for distribution network operators to underground their overhead lines, and they are working closely with stakeholder groups, which are consulting local communities to identify the priorities for undergrounding. That clearly demonstrates that there is an appetite and a willingness to pay for undergrounding where it is appropriate.

Q368 Dr Coffey: Sadly, not in my constituency: there is no evidence on Bramford to Twinstead, but I will let somebody else have a go.

Q369 John Howell: I would like to take you back to village greens. You started by saying that over the past few years we had lost a lot of green open spaces, particularly in urban areas. Would you accept that the legislation that was put through in the Localism Act and the national planning policy framework has introduced the right to restore those green open spaces through the planning process?

Naomi Luhde-Thompson: What is in the national planning policy framework is positive about that, but this seems to be going the other way, so I am just wondering about the trajectory. Are these things pulling against each other or are they working together to deliver more urban green space, for instance?

Q370 John Howell: On one hand there is a new right to create green open spaces, which we set out in legislation, and on the other there is some tidying up of the village greens legislation that is required as a result of that. If you say, as one of you did, that village greens are all about the use and love of space, that is for the birds. That does not form any resemblance at all to the experience that I have had with village greens, where we have had a lake included as part of a village green application. These are vexatious and they come up after the planning application has gone in as a way of frustrating it.

Ingrid Samuel: I guess I repeat what I said before: it depends on perspective, I suppose, whether it feels vexatious or not. The town and village green, and the right to register town and village greens, have purchase with local communities, who understand how they work. I am not saying that this should not and cannot be done through the planning system in some circumstances but that one needs to think carefully about the specific trigger events and whether or not they disadvantage that opportunity to engage with that particular—

Q371 John Howell: With respect, that is a waffly answer which gets us absolutely nowhere. This is an attempt to tidy up this legislation; it is an attempt to bring some sanity to the village greens experience that we have had; and it is allowing communities to set up their own green open spaces. I cannot see what is wrong with that.

Ingrid Samuel: I think we accept that there is an opportunity to engage through the planning system. I think, as I said, that it is about thinking about the individual trigger mechanisms and if at each point when we close down that opportunity to engage with village greens, that that does not disadvantage a community opportunity to state what is important to them.

Q372 John Howell: We have opened up equal opportunities and greater opportunities for green open spaces.

Ingrid Samuel: Green open spaces are not being taken up to a large extent, so maybe there is a job here to encourage local authorities and others to push that more.

Q373 John Howell: Well, the green open spaces are being taken up as people produce their neighbourhood plans.

Naomi Luhde-Thompson: I think that the question is, "What happens in areas where people are not taking up neighbourhood plans?" If there is not total coverage in England of neighbourhood plans, then you have obviously got gaps there. And I think that although your perspective is that the legislation is designed to deal with vexatious applications, our concern is that perhaps it is too much of a sledgehammer and that there needs to be something softer about dealing with vexatious claims. But it does not get away from the fact that people perhaps do not appreciate their greens and open spaces until they are threatened by development. So that is another issue, and a contextual factor, that has to be taken into account.

Q374 John Howell: No, I am sorry—I disagree with that. Neighbourhood plans are not being produced in areas where there is no chance of development. It is mutually exclusive.

Ingrid Samuel: Could you repeat that?

Q375 John Howell: Yes. You asked, "What about areas that are not producing neighbourhood plans?" They are not producing neighbourhood plans where there is no chance of development, so the village green issue does not come into it.

Naomi Luhde-Thompson: My experience of working with communities—I work, for instance, with communities in east London and other areas, such as Liverpool—is that they are not doing neighbourhood plans because they do not have the resources to do neighbourhood plans, and I think that is a very big issue for them. For instance, one community that we have worked with, up around the Seven Sisters redevelopment, did a community plan pre-dating the neighbourhood plan legislation, but they found it very difficult to get that community plan recognised or taken into account by the local authority. So I think that they did want to look at neighbourhood planning, but I would not say that everywhere that could do a neighbourhood plan is doing a neighbourhood plan at the moment.

Q376 Gordon Birtwistle (Burnley) (LD): May I take you back to the issue of shale gas? I am a Lancashire MP. Shale gas is a valuable asset that the country has got; we have something like 50 years of gas sat under Blackpool at the moment. The Institute of Engineers confirmed that there is absolutely no problem getting the gas out. Most geologists who have looked at the situation have confirmed that the gas is way below the watercourse—it is something like 5 to 7 km down into the earth, and the watercourses that we would normally come across are nowhere near that sort of depth—and yet the search for and the commercial production of this asset is being held up by what I would call issues that are not planning issues but issues that are more about frightening people rather than informing them of what is going on.

How do you oppose the fact that the planning authorities have got the proof that this is okay? It is being opposed by putting fear into people that it is going to affect the watercourses. One comment was, "If you drill for shale gas in St Annes, or Southport, there will be an earthquake in Blackpool." There is no proof of that, yet this fear is being spread among the people of Lancashire.

Naomi Luhde-Thompson: As the Committee is not looking into shale gas, I shall restrict my comments to be relevant to the Growth and Infrastructure Bill. On information, the British Geological Survey have done a report on the potential groundwater impact from exploitation of shale gas in the UK. There is information there about the sorts of chemicals used in shale gas, such as hydrochloric acid. There are also various reports because in the UK it is not a tried and tested process. There is this idea that we need to have more information, particularly to fulfil conditions so that we are not contaminating groundwater. We are assessing how that might happen.

My point about the application is that there was not sufficient information with that application to understand what the possible impacts could be. As you know, there are market gardeners in that area, there is the Ramsar site in the Ribble estuary, and there were issues about what the possible impacts could be which were not clear from the application. We, for instance, asked the planning officers for information on the conditions, and that information has not been forthcoming; we are still waiting for an answer about the information on conditions. There were issues about what happened to the waste water, and the Environment Agency have been able to answer questions about that, so my point was merely in relation to the provision on information requirements in the Growth and Infrastructure Bill—that there are occasions when information is required, because it is a novel technology and one needs that information.

Another example of information that you might want to require with a development is, for instance, on the viability assessment of a development that comes forward. I was also involved in another application, in London, where a community had asked for information as to why no affordable housing requirement was put forward as part of a large development where there was a great affordable housing need. The viability assessment, which had been produced by the developer and provided to the council, was not forthcoming before the decision was made on the application during the consultation period. It was then, of course, difficult for the community to say, "Well, we do not understand why there is no affordable housing requirement," as they had not seen the arguments put forward by the developer. That is another example of information that you might want to provide with an application so that when the community is being consulted, they can make an informed response.

Q377 Gordon Birtwistle: Would you agree that if we start extracting shale gas from around the Blackpool area, the economic growth would be massive? I have seen most of the documentation, and for the experts in the field, the Institution of Mechanical Engineers—

The Chair: Order. I do not want to get into a discussion about the planning merits of shale gas in Lancashire and the merits of the planning application. The merits of the Bill are what we are focusing on.

Gordon Birtwistle: The Bill is about growth and it is—

Naomi Luhde-Thompson: I am really happy to talk to you afterwards. Shall we do that?

Q378 Mr Raynsford: I want to bring you on to something that was brought up by Dr Stone in his evidence in the previous session. You may or may not have heard it. It is relevant to national parks and areas of outstanding natural beauty, and it is about the section 106 provisions that allow for affordable housing but prevent that housing being lost through market forces because of the huge potential value of any home in an outstandingly beautiful setting like that. Rather counter-intuitively, his evidence reinforced a concern that I think the Committee should be very concerned about: if a viability test is applied after agreement has been given for such provision for an affordable home, subject to a section 106, once the consent has been granted, if the applicant were then to come back and say that it is not viable and seek to have the rules relaxed, that property would no longer be available for the purpose for which it was agreed and on which the landowner may have granted the land at below market price on the understanding that it would be for affordable housing needs. That feels counter-intuitive, but I suspect that Dr Stone has got a point.

I would welcome your views on whether you think there is a risk that clause 5 could affect agreements that have protected the provision of affordable housing for very special needs, such as for people who need to work or have good reason to be in a national park or an area of outstanding natural beauty. Those properties could be lost because market forces would inevitably push up prices to a point where local people on relatively low incomes would not be able to afford them. Do you think that is an issue, and do you have any evidence of that?

Ruth Bradshaw: I would be happy to send something to the Committee in writing after the meeting. Due to resource constraints, we have not been able to look in detail at all the clauses in the Bill. However, I think we would share the concerns of the national park authorities on the difficulties and the importance of being able to provide affordable housing in national parks. If these measures were to make that more difficult that would be of particular concern to us. I am happy to go away and see if we can identify any evidence through our members in national parks societies.

Q379 Mr Raynsford: Can you do that fairly quickly? I suspect that the Committee will get to the clause early next week.

Ruth Bradshaw: I can certainly try.

Naomi Luhde-Thompson: I think that there is a policy in Wales that allows for the safeguarding of development in rural areas, particularly for local people. There is a lot of policy and practice there.

Mr Raynsford: There is in England, too. This provision and clause 5 as drafted could unwittingly undermine and destroy that. That is the point that I am trying to get at.

Q380 Nic Dakin: Can I bring you back to clause 4 and the issue of information? Clause 4 would introduce a limit on the information that local planning authorities can require to be submitted with a planning application. What effect do you think that might have on the quality of planning decisions?

Ingrid Samuel: Could you say that again?

Nic Dakin: Yes. Clause 4 introduces a limit on the information that local planning authorities can require to be submitted alongside a planning application. You were talking earlier about information. I wonder what sort of impact that might have on the quality of planning control.

Ingrid Samuel: We were talking before about the importance of having the right information for each individual planning application. Depending on the complexity of the planning application, different amounts of information will be required. It needs to be looked at on a case-by-case basis and local authorities need the ability to ask for what they need to ensure the right outcome.

Naomi Luhde-Thompson: There are so many impacts. It depends on how big the development is as well. Major applications can have a massive impact on traffic, air quality and access to schools. There are so many different factors that it can have an influence on. Obviously, if the local authority is making a sound decision, it does need to have information on those things. If the applications are smaller it should be relevant and pertinent to the actual case itself.

Q381 Nic Dakin: So, as currently drafted, there is potential risk in that clause in terms of quality of decisions.

Naomi Luhde-Thompson: There is a potential risk that it discourages local authorities from asking for the information that they need.

Q382 Paul Blomfield: Clearly, the whole planning process is about reconciling and getting the right balance between conflicting interests and concerns. As you will be aware, clause 1 provides for poorly performing authorities to have planning decisions pushed up to the Planning Inspectorate, but without any opportunity for appeal against its decision, short of judicial review. Clause 2 gives the Secretary of State greater powers to award costs. As organisations representing and often deeply engaged in community interests and ensuring that there is an effective community voice, how far do you think that the Bill gets the right balance?

Naomi Luhde-Thompson: I think that the Bill is quite centralising in the sense of clause 1 added to clause 21. It is obviously drawing decisions upward. The issue about public participation in decision making comes under the Aarhus convention, to which the UK is a signatory, which talks about public participation. What concerns me is that public participation is not explicitly mentioned. Although clause 1(6)(a) says that the local authority needs to do what it normally does, it does not specifically say that there needs to be consultation. That is something that should be up there as being important to happen. You want to get consent and feedback from the community about this application.

The issue about the Secretary of State drawing more decisions upward is with who is holding the Secretary of State to account. If that is happening through judicial review, the Prime Minister has recently announced that he wants to reduce the number of judicial reviews. In the explanatory notes, there are many references to judicial review. It says not to worry about the lack of appeal in clause 1, because you can judicially review. That does not really make sense, because you want a system where you do not want to have to resort to judicial review. There needs to be safeguards.

Clause 1 has real problems in that it is taking the decision away from democratically elected councillors in a local authority, but communities are expecting them to make the decision. If there is no clarity on how local authorities are designated, why a local authority has been designated or whether there are extenuating circumstances —perhaps that local authority took longer than 13 weeks to make a decision, because it was making a quality decision and was engaging with the developer and the developer was engaging with the community—it seems ironic to be picking on those authorities who are trying to make quality decisions, but maybe taking a bit longer about it, and saying that they are performing poorly on timeliness. The quality of outcome or the strength of participation in that decision is not looked at. There are quite a few issues with the clause.

The other thing is that there has obviously been no White Paper prior to the Bill, so we have not been able to discuss and look at evidence and have that in-the-round debate that is necessary if you are going to bring forward a piece of legislation that is quite different to the current system where the local authority is making the decision, except on major infrastructure and big pieces of kit, as it was put earlier.

Ingrid Samuel: I agree with that point about the proposals for ensuring public engagement and consultation happen not being clear. There is no particular safeguard in the Bill, and we have not seen the regulations or the policies that back it up yet.

Ruth Bradshaw: I agree, particularly with the point about the lack of prior consultation and opportunity to consider some of the implications of what is being proposed. It is quite a fundamental change and there has been no opportunity to consider it before the Bill was published.

Q383 Paul Blomfield: Do you think that the cumulative impacts of these changes in process are going to affect the behaviour of community groups in any way?

Naomi Luhde-Thompson: I do not know. Are you talking about Friends of the Earth local groups?

Q384 Paul Blomfield: I am thinking of the way in which you all might assist local communities in voicing their concerns and the way that communities themselves can engage within the planning process to get their voices heard.

Naomi Luhde-Thompson: We strongly encourage communities to engage with the planning process. We say, "Get involved. Respond to the consultation."

Q385 Paul Blomfield: Do you think that these changes will make it easier or harder?

Naomi Luhde-Thompson: Clause 1 states:

"The Secretary of State may give directions requiring a local planning authority to do things in relation to an application made to the Secretary of State under this section that would otherwise have been made to the authority".

That is not clear. If I am going to explain to a community what right they have to be consulted on this application that is going to the Secretary of State, it is not clear to me, and I do not have much explanation around that to explain to them how they get involved and have their say, so that is an issue.

What might happen is that communities that are engaged in planning—Friends of the Earth local groups are engaged in both supporting and arguing against development that they feel is unsustainable—will feel that they have elected their local members, who are in the local authority and supposed to be making decisions on planning, but suddenly they are not making that decision anymore. They will not understand why that is happening. Then, if the local authority was poorly performing on timeliness, communities might think, "No, they were just taking the right amount of time to deal with that major application, which was very problematic and contentious." There might be a public perception that their voices are not considered as important as just getting a rubber stamp.

Q386 Ian Murray: I would like to go back to clause 7. We have talked a lot about broadband and what the implications for broadband will be with regard to clause 7, but clause 7 does not actually mention broadband directly. It mentions electronic communications. Is there any concern or apprehension with regard to the section of the Bill that says that

"the need to promote economic growth in the United Kingdom"

is directly related to electronic communications, without the explicit mention of broadband?

Ruth Bradshaw: You are right to flag that up as an issue. This clause is being introduced for the purpose of trying to secure the roll-out of broadband as quickly as possible, but the implication is that it could actually be used much more widely for any kind of telecommunications infrastructure. That is a concern. We have not touched on that specific clause regarding promoting economic growth, and that is another issue that would potentially be something that would override other protections and be at the expense of long-standing and important protections that have been put in place to protect special areas.

Ingrid Samuel: It is potentially a concern. It is the first time that the statutory purpose of the national parks has potentially been eroded since 1949. There is a risk of a precedent being set. I know that the Department for Culture, Media and Sport in its announcement on 7 September said that it would be talking to mobile operators after broadband to consider what they need and would consult for mobile after the fixed Cabinet consultation, so there is potential here for continued erosion.

Q387 Ian Murray: Would you be more comfortable if the Bill explicitly mentioned broadband, rather than leaving it as wide as "electronic communications"?

Ruth Bradshaw: We would prefer to see the measure dropped from the Bill altogether, partly because of the precedent being set in terms of making changes to the national park legislation. Even if it were to be more tightly defined within the Bill as to specifically what infrastructure it referred to, that precedent would still be in place.

The Chair: If there are no further questions, that brings us to the end of our business for the day. I thank our witnesses for their time.

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

4.48 pm

Adjourned till Thursday 22 November at half-past Eleven o'clock.