PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

GROWTH AND INFRASTRUCTURE BILL

Seventh Sitting

Tuesday 27 November 2012

(Morning)

CONTENTS

Written evidence reported to the House.
Clauses 2 to 4 agreed to.
Clause 5 under consideration when the Committee adjourned till this day at Two o'clock.

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Saturday 1 December 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

Public Bill Committee

Tuesday 27 November 2012

(Morning)

[Mr George Howarth *in the Chair*]

Growth and Infrastructure Bill

Written evidence to be reported to the House

GIB 37 Professor Henry G Overman
GIB 38 Robert D Seares
GIB 39 Cambridgeshire County Council
GIB 40 Living Streets
GIB 41 Unite
GIB 42 Open Spaces Society
GIB 43 RSPB
GIB 44 Compulsory Purchase Association

8.55 am

Ian Murray (Edinburgh South) (Lab): On a point of order, Mr Howarth, can you give the Committee some guidance? We are into our third week of proceedings, but last week we received the consultation on some clauses of the Bill on the morning of our deliberations and we are now getting consultations through on other clauses. Can you, through your offices, give any guidance to the Government or Ministers to ensure that the Committee has all the evidence, so that we are well informed in our deliberations?

The Chair: I am sure that the Ministers have heard the point of order. It is not within my power to ensure that any briefing or consultation papers are in the possession of the Committee. I am sure that Ministers, having heard the point of order, will take due note.

Clause 2

Planning proceedings: costs etc

Roberta Blackman-Woods (City of Durham) (Lab): I beg to move amendment 28, in clause 2, page 3, line 18, after 'direct,', insert

'subject to criteria set out in regulations'.

The Chair: With this it will be convenient to discuss the following:

Amendment 29, in clause 2, page 3, line 21, after 'directs,', insert

'subject to criteria set out in regulations'.

Amendment 30, in clause 2, page 3, line 33, after 'direct,', insert

'subject to criteria set out in regulations'.

Amendment 31, in clause 2, page 3, line 36, after 'directs,', insert

'subject to criteria set out in regulations'.

Amendment 25, in clause 2, page 4, line 2, after 'State', insert

'subject to mitigating circumstances, to include circumstances beyond the control of the holder of the inquiry or hearing'.

Amendment 32, in clause 2, page 4, line 9, after 'direct,', insert

'subject to criteria set out in regulations'.

Amendment 33, in clause 2, page 4, line 12, after 'directs,', insert

'subject to criteria set out in regulations'.

Amendment 26, in clause 2, page 5, line 2, leave out 'if he thinks fit' and insert

'with the agreement of both parties'.

Amendment 27, in clause 2, page 5, line 5, at end insert—

'(12) The Secretary of State must publish—

(a) the criteria that are to be applied by the Secretary of State in deciding whether sub-paragraph (11) should be employed; and

(b) the reasons of the Secretary of State for directing that "anything" be done under sub-paragraph (11).'.

Roberta Blackman-Woods: It is a pleasure to serve under your chairmanship again, Mr Howarth.

With this group of amendments, we seek to ensure that when the Secretary of State awards costs he does so in keeping with the principles of good consultation and in a way that is beneficial to the planning process. Ensuring that all parties to an appeal act reasonably is essential, but the clause risks overly penalising local authorities and working against localism. If the risk of being designated as "failing" is not a strong enough deterrent for local authorities to turn down inappropriate development, the risk that they might have to pay the cost of appeals certainly will be.

That point, as the Minister knows, has caused great concern among Members. Indeed, the Minister's hon. Friend the Member for Totnes (Dr Wollaston), said in the House:

"Does the Minister share my concern that councillors are sometimes put off from declining planning permission because of the fear of bearing the full cost of an appeal? Does he agree that that is sometimes acting as a barrier to localism?"—[*Official Report*, 12 November 2012; Vol. 553, c. 21.]

There are, therefore, already some worries about the clause.

Clearly, concerns exist that the costs of appeal are inhibiting true localism, in which case how can increasing the number of instances in which a local authority would have to pay the other party's costs be beneficial, especially given shrinking budgets and the huge resources that developers often have at their disposal to undertake appeals? When local authorities consider the risk of having appeal costs awarded against them, alongside the risk that any decision overturned at appeal may contribute to their designation as "failing", it is, in the words of the chief executive of the Campaign to Protect Rural England,

"obviously making it much more likely that developments, whether good or bad, will be nodded through by a local authority."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 20 November 2012; c. 143, Q327.]

The issue was raised to some extent in clause 1, and perhaps the Minister will give further reassurances this morning to guide the Committee as to how local authorities will be able to maintain the primacy of taking decisions in line with their local plan and not because of huge concern about costs that might be awarded against them.

At present, costs are awarded in very few instances. The impact assessment sets out that last year costs were awarded in only 3.7% of cases, but it goes on to predict that under clause 2 the number of cases could rocket, with costs being awarded in as many as 20% or more of all appeal decisions. Worryingly, the Minister's Department has made no estimate of the amount that would cost local authorities, or any other party. Hence the need for amendments to allow for clear criteria and proper regulation of the procedure.

9 am

I shall take the amendments in a slightly odd order, rather than the order in which they are listed on the selection paper. Amendments 28 to 33 specifically target the need for proper criteria to be used when assessing whether costs should be awarded. The impact assessment states that

"this measure will lead to an increase in the number of costs awarded at least in the short term until longer term behaviour changes."

However, there is no assessment of how long that might take. Unless the Minister hopes that the change in behaviour will mean that local authorities say yes to everything to avoid appeal, published criteria, set out in regulations, would surely speed up the change in behaviour more effectively. Such criteria would allow the Secretary of State to define what would be deemed unreasonable behaviour and therefore encourage—rightly—local authorities to avoid it.

Nic Dakin (Scunthorpe) (Lab): My hon. Friend sets out her case very clearly. I hope the Ministers are listening carefully. Does she believe that the proposals in her amendments will give greater transparency and certainty to local communities about how matters might progress?

Roberta Blackman-Woods: My hon. Friend makes an important point. Although I have been stressing the impact of the clause on local authorities, because it is they who are likely to have costs awarded against them, we ought to bear it in mind that local communities have a huge stake in the process because of the council tax they pay. They will be very concerned that local authorities might be constrained from representing their true interests because of the threat of having huge costs awarded against them. It certainly appears to me to be yet another anti-localist provision in the Bill.

There is no benefit in giving the Secretary of State discretionary powers to award costs in the hope that it will change behaviour, unless the instances in which costs are to be awarded are plainly set out. Furthermore, as the clause will allow the Secretary of State to award a portion of costs, he will need clear guidance in setting out the formula on which the portion of costs is to be awarded and, perhaps more importantly, how it is to be calculated.

Amendment 26 is key to the whole argument that we are making against the clause. Proposed new sub-paragraph (11) allows the Secretary of State to subsume to himself personally any power in connection to the award of an appeal. Can the Minister explain why the Secretary of State would require individual power to award costs independent of the experts appointed to decide such an award? The amendment seeks to ensure that such power would only be seized when it was to the benefit of all involved. It is difficult to conceive of a set of circumstances in which that might be the case. Nevertheless, it is important that some restraints are put on the Secretary of State's powers under the sub-paragraph. We need to ensure that the Secretary of State is able to take such power unto himself only if parties to the appeal agree that that is appropriate in the circumstances.

Amendment 27 further constrains the unprecedented power given to the Secretary of State under proposed sub-paragraph (11). It seeks to ensure that the Secretary of State will make any decision under the sub-paragraph in accordance with published criteria. In previous sittings we heard assurances from the Minister that the Secretary of State does not make his decisions on a whim, and I am sure we are all relieved to hear that. However, some local authorities may still struggle to divine his reasoning. Published criteria would be extremely useful to assist them in trying to determine what is in the Secretary of State's mind.

Nic Dakin: What my hon. Friend has said about the amendments brings to mind the overwhelming evidence brought to us in favour of localism, but also the great concerns about the centrist tendencies of this legislation. Does she believe that the arguments in her amendments will assist in meeting the concerns expressed in those representations?

Roberta Blackman-Woods: Again, my hon. Friend makes a good point. Local people and councillors, who will have these costs awarded against them, need a better understanding of what will lead the Secretary of State to exercise these quite extraordinary powers and, if he decides to do so, what informs his decision making because, from the information before us, that is not at all clear.

I hope that the Secretary of State will ask for criteria to be given to him to help him reach a decision under the clause—not that it is exactly my role to make his job easier, but it may help all of us to understand what would be going on in those circumstances. If the Secretary of State has criteria to help him make a decision in an open, transparent and fair way, it should be relatively simple for him to share the criteria publicly.

Ian Murray: I am grateful to my hon. Friend. For the second week in a row, she is dissecting clauses with great aplomb. The planning system is all about certainty and transparency, and the best way to create that would be to put in place a set of rules and a framework that people can work from so that they know exactly what is happening with a planning application. Indeed, if there were criteria in place, as proposed in the amendments, people would know exactly when the rules and framework would come into effect.

Roberta Blackman-Woods: My hon. Friend makes an excellent point, which goes to the root of the amendments. The clause gives extraordinary and unprecedented powers to the Secretary of State in terms of awarding costs, particularly, I suspect, against local authorities. We need, therefore, to be clear about what will inform his

[Roberta Blackman-Woods]

decisions, how he will go about making them and what criteria he will use. It would also be useful to know what the time scales will be.

We want the Secretary of State to publish criteria that can be assessed to see whether he is making a fair and even-handed decision about the award of costs, and we want a requirement for him to publish his reasons for his decisions. Not only do we want open and transparent criteria that will inform decisions, we want them to be published. We also want to know, in particular circumstances, how they are being applied. We want the Secretary of State to publish his reasons; we do not think that it should be the role of local authorities, the other agencies involved or, indeed, Parliament itself to try to work out what the reasons might have been in any particular set of circumstances; we want it to be clear and transparent, and we would have thought that is something the Government would wish to do.

We have already seen that the Secretary of State has, some would say unfairly, allocated cuts across local authorities, with councils in northern urban areas and London boroughs—with high levels of deprivation and predominantly run by Labour—seeing their budgets cut by almost 10 times the amount lost by most Tory-administered authorities in southern areas of England during the Government's first spending round. I raise that issue because it is adding to the fears in the local government community that the award of costs may fall in an equally inegalitarian way. That is why we are pressing the point so strongly: if the Minister and the Secretary of State want to ensure that they are not open to challenges similar to those that cuts are being made unfairly, they should set out clear criteria to make the process of decision making transparent.

Nic Dakin: My hon. Friend makes a good point about the impact of the opaqueness of the clause; together with the challenges faced by planning departments, it could lead to inconsistency across the country. I was struck by the written evidence on the clause from RenewableUK:

"We suggest that any award of costs regimes are transparent and able to be applied consistently across the board."

Consistency is a key element, as well as transparency and openness.

Roberta Blackman-Woods: My hon. Friend makes a very good point indeed, and I will be interested to hear the Minister's response to it; the whole point of having published criteria and, in particular, publishing the reasons for a decision about award of costs made by the Secretary of State is so that we, along with everyone else, can assess clearly whether decisions relating to similar circumstances have the same broad outcome. My point is that lots of people in local government are concerned that that might not be the case, given the way in which cuts have been allocated so unevenly and so unfairly across local government.

Lastly, amendment 25 addresses a different problem: the circumstances under which the Secretary of State may have costs awarded to him for an inquiry that was not held. It is entirely reasonable that the Secretary of State may ask for costs to be awarded when an appeal does not take place as a result of another party's doing. However, it is equally unreasonable that any costs should be awarded for reasons beyond the control of the party being pursued for costs. I am sure we can all agree on circumstances that would mitigate a claim for costs; those circumstances should be clearly set out on the face of the Bill.

The explanatory notes state merely that the measure will allow for costs to be recovered where, for instance, a hearing or inquiry is "cancelled at short notice." However, there is clearly a significant difference between the cancellation of an inquiry due to flooding, for example, and cancellation due to ill preparation. The events of yesterday bring the example of flooding very much to our minds: in my Durham constituency, most of the major roads into the city centre were closed and people had to be sent home early from work. Much as I would like to discuss the problems of flooding and how to alleviate them in Durham and elsewhere, I am sure that I will be ruled out of order, so I will not go there.

9.15 am

My point is that it would have been extremely difficult for anyone to have got to an inquiry had it been held in the town hall or the offices of the county council. We are just checking that there is a degree of reasonableness, and we want to ensure that it will be applied. The amendment asks for that to be spelt out, so that it is clear what sort of mitigating circumstances may be taken into account in trying to decide whether costs should be awarded if an inquiry is not held.

Given that the Bill will take powers away from local authorities and hand them to the Secretary of State, has the Minister considered whether the Secretary of State, or any person he appoints, may also be liable to pay costs? Again, I want a bit of clarity, which we need, on the clause and this group of amendments.

The Parliamentary Under-Secretary of State for Communities and Local Government (Nick Boles): It is pleasure to serve under your chairmanship again, Mr Howarth. I thank the Committee for the work done last week on clause 1. Our progress was somewhat deliberate, but constructive, and, since you were not there, Mr Howarth, and some members of the Committee were unable to be there for the entirety of our proceedings, it is worth acknowledging two points.

First, I am grateful to the Committee for helping me understand how important it is going to be for the inspectorate to hold hearings locally if contentious decisions come before it because a local authority has been designated, and that it will need to look at the possibility of those hearings in a slightly more generous light than it would on appeal. We have taken that point away, and I will take it up with the inspectorate, so the Committee has been very constructive there.

Secondly, although I was not able to persuade all members of the Committee that clause 1 is genuinely intended as a deterrent, it would, in fact, apply to very few authorities. Indeed, I hope it would apply to no authorities, should they improve their performance. Those were two important steps that we took, and I hope that we will have as constructive a day today.

I want briefly to address the amendments proposed by the hon. Member for City of Durham. I hope that I can reassure her that much of what she seeks already

happens, and that any malign intent that she perceives behind these clauses is not actually there. The cost awards under clause 2 will be made only when one party to an appeal behaves unreasonably. Often, appeals are matters of fine judgment. There are different material considerations—they are, slightly, a question of apples and oranges rather than pears—and different people could, perfectly reasonably, reach different conclusions about how to weigh them up. In such cases, there will be no question of the inspectorate's issuing an award for costs.

The clause's intention is to look at those relatively few situations where one party or another behaves unreasonably in taking the matter to an appeal, in the case of an applicant, or in having refused the original application, in the case of a planning authority. I hope it reassures the hon. Lady to know that the Planning Inspectorate currently allows only 34% of appeals, and refuses 66%. The implication is that applicants are more likely than local authorities to be affected by the award of costs in the clause, because the current evidence shows that applicants' cases are normally overturned by the Planning Inspectorate on appeal and local authorities' decisions are being upheld in the majority of cases. If it is assumed that unreasonableness occurs in more or less a similar proportion of those events, it is at least as likely and probably more likely that developers, rather than local authorities, will be affected by the clause.

Mr Nick Raynsford (Greenwich and Woolwich) (Lab): May I put it to the Minister that, without an evidence base, it is quite difficult to make that assertion? He will know that, in many planning appeals, the merits of the argument are finely balanced, as he said. However, in appeals where there is a clear case of unreasonableness, it is often the case that the local authority has taken its decision with regard to factors that should not have been taken into account, or has acted in a way that is plainly wrong. Therefore, there is a much greater likelihood that costs will be awarded against the local authority.

Nick Boles: I am grateful to the right hon. Gentleman for raising that issue, because that is what we are trying to root out. We have the national planning policy framework, the primacy of local plans and the vastly reduced nature of national policy—there is no excuse for local authorities not knowing what national policy is because there is so much less of it than there used to be. We are trying to persuade all local authorities that they must make decisions in accordance with policy, whether it is their own local policies—the local plan—or national policies. If they do not, they are behaving unreasonably. They might like to make a decision that does not accord with those two sets of policies, but if they do so, they are behaving unreasonably and are liable for costs.

We hope that the clause will underline the point we keep making: local authorities must have a policy and a local plan, or must find a sentence in the national planning policy framework to justify their decision. If they do not and no other part of government policy, such as a national policy statement, supports their position, they are likely to have their decision overturned and, if the decision is particularly unreasonable, have costs awarded against them. I do not believe that that is an unreasonable expectation to lay upon them.

Mr Raynsford: I am listening carefully to the Minister's response. If one accepts that argument, it clearly undermines his previous argument that, statistically, it is more likely that costs will be awarded against applicants.

Nick Boles: Not at all. The right hon. Gentleman suggested that local authorities are more likely to behave unreasonably; I have a more optimistic and benign view of them. Given that most of their decisions are supported by the Planning Inspectorate, it is likely that more often it will be applicants who behave unreasonably. They try it on, basically, and see whether they can have another go at a second court. They have deep pockets—usually deeper pockets than local authorities—and so they think they might have a go. It is more likely that that kind of behaviour will be rooted out, rather than the behaviour that the right hon. Gentleman seems to think local authorities are prone to, which I suggest is relatively rare and will become rarer as a result of the clause.

Nic Dakin: Could the Minister clarify the difference between a reasonable appeal and an unreasonable appeal?

Nick Boles: The hon. Gentleman asks a good question. There is a huge amount of case law on reasonableness, which is one of the reasons why, elsewhere in the Bill, we use the concept of reasonableness. It is a well established concept. There is guidance currently on the award of costs. Of course, the planning inspector currently has the ability to award costs. There is published guidance on that, and there always has been. We will be updating that guidance. It will be published, as guidance always is, well in advance of its being exercised.

I do not think there is any great mystery here. If someone has a policy support for their position, it is probably reasonable. If they do not have a policy support, either in the local plan or in national policy, it is probably unreasonable. I do not want to get into the business of predicting how it will apply to every particular case. That is the planning inspector's job, not mine.

Roberta Blackman-Woods: The Minister is being most generous in giving way. Will he inform the Committee whether the Department has had meetings with developers to explain that a purpose of the clause is to change developers' behaviour? From our discussions with developers, I am not sure that that is their understanding of the clause or, indeed, a possible outcome. It will be interesting to see how the Minister measures whether the clause is successful.

Nick Boles: The hon. Lady will be aware that we are all prone to focus more on the mote in somebody else's eye than the beam in our own. Of course, developers are frustrated by perceptions of unreasonable behaviour on the part of local authorities. All I am suggesting is that the clause will apply evenly, and that the inspectorate will be able to award costs against unreasonable behaviour. Given that the inspectorate is already overturning more developers' appeals than local authority decisions, it does not seem completely outlandish to expect developers to be affected more often than local authorities.

I will move on to a few of the points embedded in the amendments. First, the hon. Lady asked for explicit ability to take account of mitigating circumstances.

[Nick Boles]

I assure her that that is already the case. The planning inspector must allow the parties to present evidence on why their case, even if unsuccessful, was reasonable, before any decision about costs. That will be entirely maintained.

The hon. Lady raised the spectre of the Secretary of State in his imperial pomp making decisions about cost awards. While the current Secretary of State has the wisdom of Solomon, and I trust him to make good judgments on almost any question, he is also a busy man with bigger judgments to make. The clause is intended to do simply this: planning inspectors have a particular set of valuable skills that we want applied to difficult planning questions; the question of awarding costs, and whether behaviour has been reasonable, need not be made by a planning inspector and will take up some time. We therefore propose to make it possible for the Secretary of State to create a new category of officials within the inspectorate called specialist cost officers, who will do this task. The clause has to be framed so that the Secretary of State is able to appoint another person, an inspector, because, as hon. Members know, an inspector is individually appointed to adjudicate particular cases. The intention is not that the Secretary of State himself, but officers appointed for the purpose, would take the decisions.

Nic Dakin: Is the Minister saying that there will be another group of officials who apply a test of reasonableness and apply an accommodation of costs, rather than the Planning Inspectorate?

Nick Boles: I am suggesting that we will look to appoint some people to be specialist cost officers within the Planning Inspectorate, who will build a body of work and expertise. Of course, they will work on the basis that the Planning Inspectorate has a long history of making awards of costs. Reasonableness is an issue that comes into those awards as much as it would in this slightly expanded ability. We want to make that a specialist function, rather than take up the time of valuable people who should be focusing on planning decisions. There is nothing more conspiratorial than that lying behind the clause.

Roberta Blackman-Woods: That is very interesting information. I have to say that the Minister is full of surprises. Will he tell the Committee how the officers are to be funded, whether they will be on a performance agreement and whether the arrangement will be cost-effective?

Nick Boles: The hon. Lady is nothing if not creative. She can conjure up all sorts of spooky scenarios of the evil things that I propose. Unfortunately, what I propose is far more humdrum than she thinks. We will employ people in the Planning Inspectorate and they will report to the chief planning inspector and the chief executive of the Planning Inspectorate. It is simply that the question of whether behaviour was unreasonable and therefore liable to costs is not the same as the question of whether a planning decision was good or bad. We do not want to distract planning inspectors with that decision, but to build up a small group of people who will be employed within the Planning Inspectorate from its existing budgets to do the work.

Nic Dakin: The Minister was helpful when he said that no additional costs would be related to the additional function and that its costs would be borne by squeezing the rest of the Planning Inspectorate's funding. All I am hearing is greater bureaucracy and greater complexity, and I hope the Minister can make it clear that that is not the case.

9.30 am

Nick Boles: I do not want to allow the hon. Gentleman to put words into my mouth, although no doubt they will be better words than those I come up with on my own. I am not saying that the existing budgets of the Planning Inspectorate will be frozen in aspic. They may need to be adjusted in different directions as a result of some of the decisions taken under the entire Bill, given the different major infrastructure regimes and the designation of poorly performing authorities. Work will be carried out within the Planning Inspectorate, and it will be funded by the Planning Inspectorate. It is simply a question of how we use valuable, skilled people most effectively to ensure that decisions are made in a timely way that is also fair and proper.

Simon Danczuk (Rochdale) (Lab): Is the Minister not worried that he is putting more staff into the quango and expanding it, and that he will be creating more red tape, not getting rid of it?

Nick Boles: No, I am not worried about either of those points because I am not doing either of those things.

Ian Murray *rose—*

Nick Boles: I may have reassured the hon. Member for City of Durham, but perhaps I have not reassured the hon. Gentleman.

Ian Murray: I am grateful to the Minister for accepting an intervention from a Scot. At the bottom of its submission GIB 36, one of the United Kingdom's biggest house builders, Barratt Developments, clearly stated that there

"is a need for clarity and certainty in respect of fees and costs"

with regard to clause 2. How would the Minister respond to Barratt Developments?

Nick Boles: The hon. Gentleman is unfair. Last week, I said how much we had to learn from the different planning system pursued by the Scots and perhaps—conceivably—even how much the Scottish people and the Scottish Government might want to learn from us. I am therefore always happy to take his interventions.

As I have explained, there is clear guidance on costs awards. It will be updated to reflect the changes that take place, should the two Houses decide to put the Bill into law. That will all be published in advance of the

exercise of the new provisions, so everyone will have all the information they need. On that basis, I hope that the hon. Lady will withdraw the amendment.

Roberta Blackman-Woods: I have heard what the Minister has said on the group of amendments. Given especially some of the new information that we received this morning about how some of the decisions will be made and the hon. Gentleman's assurances that the criteria will be updated, we will think about the issue again and check out the additional information that he has presented to us. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 2 ordered to stand part of the Bill.

Clause 3

COMPULSORY PURCHASE INQUIRIES: COSTS

Roberta Blackman-Woods: I beg to move amendment 61, in clause 3, page 5, line 11, after 'applies' insert

'subject to mitigating circumstances to include circumstances beyond the control of the holder of the inquiry or hearing'.

The Chair: With this it will be convenient to discuss amendment

Amendment 62, in clause 3, page 5, line 16, at end add—

'(c) to the costs of a local authority that is a party to a public local inquiry held in England in pursuance of this Act where one or more other parties does not attend the inquiry.'.

Roberta Blackman-Woods: Like amendment 25, these amendments seek to ensure that extenuating and mitigating circumstances are taken into account when awarding costs for public local inquiries that do not go ahead for compulsory purchase orders. It is not clear in the clause or the explanatory notes against whom the Secretary of State would be awarding costs, so perhaps the Minister could help to identify what would happen in such circumstances. The impact assessment states that clause 3 will save the Secretary of State

"the expense of arranging a specific costs inquiry"

and that

"there will be benefit in avoiding the loss of costs,"

but it does not set out who will lose out by having to pay costs that they would otherwise not have paid. As compulsory purchase inquiries are usually held on the Secretary of State's behalf would he be awarding costs against himself? If not, can the Minister shed some light on which parties will pay and under what circumstances?

However the costs are to be awarded, we know from the short title of the Bill that it is expected that measures such as this will have a spectacular impact upon growth and the economy. I return to that point because the detail and red tape established by the Bill make it easy to lose sight of the fact that it is supposed to be about growth and infrastructure development. We want to know who will be footing the bill and what the resultant leap in GDP will be as a result of the measures in clauses 2 and 3. I hope that the circumstances in which the costs will be awarded exclude those in which a party misses an inquiry, or is forced to cancel due to reasons beyond their control. That would be unfair for anyone, whether landowner, developer, local authority or even the Secretary of State, who is unable to attend an inquiry or has been prevented from doing so by matters outside their control. Amendment 61, like those before it, seeks to ensure that circumstances such as those are taken into account when the clause is applied.

Nick Boles: I hope that I shall be able to reassure the hon. Lady that while the clause may not be the single most important provision in the Bill, it is nevertheless justified and worth while and that we will not need to detain the Committee for too long. The body that would meet any costs awarded in the case of a compulsory purchase order is the acquiring authority—the local authority that is pursuing a compulsory purchase order in order to facilitate some development or other.

The purpose of the clause is simply to clear up a current anomaly that occurs when a party to such an inquiry does not attend the inquiry, because they have actually managed to come to a separate agreement with the acquiring authority. It could be a property owner who did not need to have their property compulsorily acquired, because they had actually reached an agreement with the acquiring authority to develop it alongside the authority. In that case, bizarrely, at present they need to go to the inquiry in order to apply for their costs in going through that process. That seems somewhat strange and crazy, so we want to sort it out.

I am glad to say that the hon. Lady's concern that it might be somehow unfair on the acquiring authority if an inquiry is cancelled due to an inspector being taken ill is unnecessary, because if an inspector were indisposed for some reason or was precluded because of a conflict or whatever other reason, the inquiry would not be cancelled; it would simply be adjourned or postponed. The only body that can cancel the inquiry is the acquiring authority, so it will not be penalised by its own decision. The clause will clear up the slight anomaly in the position and align it with the way we deal with other kinds of inquiries, to ensure that people can get their costs, having behaved reasonably, without attending the inquiry.

Roberta Blackman-Woods: The Minister's comments are helpful in allowing us to understand why the clause is in the Bill. Will he reassure us further that the clause is not intended in any way to turn local authorities away from using compulsory purchase orders? We know that they are incredibly important to amass land for future development. The Committee would like to hear reassurance on that front as well.

Nick Boles: I am happy to provide that reassurance. CPOs are an important tool in local authorities' armoury for the exercise of their general power of competence on behalf of local people and to create important benefits for the entire community. There is no intention at all to make CPOs a less attractive route; there is just an intention to sort out an anomaly that is unfair on some parties. It happens on relatively rare occasions, but it does happen.

Roberta Blackman-Woods: That clarification was extremely helpful. On the basis of the Minister's comments, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 3 ordered to stand part of the Bill.

Clause 4

LIMITS ON POWER TO REQUIRE INFORMATION WITH PLANNING APPLICATIONS

Roberta Blackman-Woods: I beg to move amendment 63, in clause 4, page 5, line 23, leave out 'reasonable' and insert 'appropriate'.

The Chair: With this it will be convenient to discuss amendment 64, in clause 4, page 5, line 25, leave out from 'if' to 'that' in line 26 and insert

'the local planning authority considers'.

Roberta Blackman-Woods: Contrary to the Minister's claim that this is the clause that will make the most positive impact on the planning system and the speed of development, the evidence heard by the Committee revealed that it is largely redundant and simply panders to the lobbying of certain major developers, rather than delivering any substantive change.

The Local Government Association branded the clause "legally incoherent," because local authorities are already restricted to requesting reasonable information. Similarly, the British Property Federation questioned the efficacy of the move, pointing out that there would be no way of enforcing such a change and that the clause is simply tantamount to proclaiming motherhood to be a good thing. The fact that information requests should be reasonable is universally acknowledged, and the inclusion of the clause will not do anything. In an evidence session, Liz Peace asked,

"how do you implement it? What sort of sanctions do you have? Someone standing up and declaring that motherhood is great? What we actually need is the follow-up on that."—[*Official Report, Growth and Enterprise Public Bill Committee,* 13 November 2012; c. 41, Q3.]

A number of the points I want to raise are about how the Minister seeks to implement the provisions of the clause.

Amendment 63 would ensure that requests for information are appropriate. It is already in law that requests for information should be reasonable. What we think the Minister is getting at—obviously it is for him to tell the Committee himself—is that the request should be appropriate. As I said, the provision would sit alongside the existing requirement that requests are reasonable and would reinforce rather than simply restate the existing law. It would be more likely to bring about a change than the clause as it stands, as it seems to be a legal tautology.

9.45 am

In the longer run, however, or the next time Downing street and the Treasury panic about the lack of growth and the Minister wants to be seen to be doing something, he should perhaps look elsewhere. In this context I ask him to consider what steps he is taking to deliver the changes set out in the Killian Pretty review commissioned by the Labour Government in 2008. It recommended that information requests be refined—not, may I remind him, defined. Publishing responses to the consultation on streamlining information requirements for planning applications which closed two months ago might also be a good start.

I am nervous about asking the Minister to publish anything, because I usually find that he has done so 10 minutes before I get to my feet. In these circumstances I am reasonably confident that this has not yet been done. I therefore ask him to go away and look at this. Let us be clear. We all want information requests to be reasonable. A number of people who gave evidence to the Committee talked about not being clear, at times, why they were being asked to present information regarding a particular planning application. This measure is already in law and we want it to be appropriate. The Minister cannot achieve it simply by stating that it must be the case.

I have another set of questions about the clause which relate to how it sits alongside the national planning policy framework. As the Committee will know, avid followers of planning as we all are, the NPPF was presented by a previous planning Minister and the Secretary of State as cutting through red tape, getting thousands of pages of planning guidance down to 50 pages. This was an incredible achievement. However, it seems that, rather than the NPPF being allowed to set the framework in which planning decisions are made, it is now being underpinned by legislation of which the Bill is a part, and by guidance underpinning that legislation.

It might help to demonstrate my point if I briefly read out the relevant paragraphs of the NPPF, to which I need to understand how the measures in the Bill relate. Indeed, they call into question what the Minister and his Department think its status is. Paragraph 192 states:

"The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations Assessment and Flood Risk Assessment). To avoid delay, applicants should discuss what information is needed with the local planning authority and expert bodies as early as possible.

Paragraph 193 states:

Local planning authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals and reviewed on a frequent basis. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question."

The next paragraph states:

"Local authorities should consult the appropriate bodies"

on what is necessary.

Given that the information is already set out in the NPPF and the requirements, which are pretty precise about what local authorities should be doing, it is not clear to us why the clause is necessary. It has added to my nervousness that the Government think the NPPF is not strong enough and needs to be underpinned by legislation and guidance; so everything that we heard about planning guidance being reduced to 50 pages was absolute nonsense, as we suspected at the time.

Nic Dakin: My hon. Friend makes a good point about the centrality of the NPPF and the danger of the clause. Does she agree that one of the concerns that came forward strongly in the evidence is that clause 4 may lead to local authorities not asking for all the information necessary to make good decisions on behalf of local people, which could lead to poor quality planning decisions, to the detriment of localities?

Roberta Blackman-Woods: Indeed. My hon. Friend clearly demonstrates the need for this amendment, because a number of people who gave evidence, either written or in the evidence-taking sittings, made it clear that what they really wanted from local authorities was clear guidance about what information was needed to help make the decision, and for it to be made more clearly and easily. There was some concern that it was not always apparent why local authorities needed particular information.

We are asking that any information that is requested should be appropriate. As the NPPF is already suggesting that the information should be proportionate, it is not at all clear to me why the Minister would not approve the amendment. It is simply there to be helpful, and to be as reasonable as the existing law. What the Minister is getting at is that requests should be appropriate. I am sure we do not want to usher in a set of circumstances where local authorities do not have the information they need to take a decision, because that would slow down the development process.

Simon Danczuk: Is the problem with the clause that it encapsulates the whole problem with the Bill? As we would describe it in Lancashire—I remind hon. Members that it is Lancashire day today, and we should be celebrating—it is just faffing around the edges of what is required. That is the problem—not just with the clause but the Bill in totality.

The Chair: I am sure there will be no faffing around in this Committee.

Roberta Blackman-Woods: Thank you, Mr Howarth, for clarifying that faffing around is parliamentary language. It will be a phrase that we employ from time to time to describe the Bill, I fear. I apologise to my hon. Friend the Member for Rochdale for not acknowledging at the outset that it is Lancashire day today and we should be celebrating some sort of birthday, if that is what it is.

Before moving away from amendment 63, I want to ask the Minister to clarify the role of the NPPF. Amendment 64 deals with the fact that no evidence was presented at earlier stages—or, as far as I can see, in any of the Bill's accompanying documents—to suggest that local authorities were purposefully requesting superfluous information in order to be vexatious. In fact, the National Housing Federation underlined the point that excess information also works against local planning authorities. According to the NHF chief executive, David Orr, it gets

"completely bombarded by vast amounts of information that do not help to determine whether the planning application is consistent with the plan."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 13 November 2012; c. 57, Q40.]

As such, we can clearly see that it is in the local planning authority's interest as much as anyone else's for requests to be proportionate. It is therefore understandable that the relevant local authority should determine whether a matter will be a material consideration. That is not what the Government have implied. For instance, the impact assessment says that the intention of clause 4 is to ensure that information requests are of "genuine relevance". That seems to suggest that local authorities are deliberately requesting information that they consider might not be relevant.

Those of us who have sat on planning committees know that it is really important for members to have clear evidence, the direct relationship of which to the decision that is to be made is absolutely apparent, and background documents, where necessary, that are referenced in a way that makes it easy for members to access the information. The Minister might want to turn his attention to the way in which information is presented. However, we accept that in some ways, the NPPF deals with this matter already, and we are not sure why it has not been allowed to bed in and change behaviour where necessary. Such a change is probably not necessary in as many cases as the Minister thinks, but we are particularly conscious of the need to ensure that councillors get the information they need. We know that it is a balancing act, and that it can be difficult to always get things exactly right in the case of individual applications. As with amendment 63, what is needed is for everyone to sit down in the early stages of the planning process, decide what information is required and ensure that it is appropriate for the sort of decision that needs to be made. The decision needs to lie within the gift of a particular local authority, which needs to be able to look at what is genuinely relevant.

Nic Dakin: Does my hon. Friend recognise that the evidence we have seen is not only from organisations such as the Local Government Association, but from developers such as RenewableUK and Barratt? They are concerned that the ambiguities within the clause might lead to greater litigiousness and greater problems. Her amendments are helpful in putting forward a more positive way.

Roberta Blackman-Woods: Indeed. My hon. Friend once again makes an excellent point. Several developers gave evidence. They wanted to be clear about why information was needed, and about the form and time scales it was needed in. They were asking for certainty and clarity, and effectively made the point that I made earlier: if a decision gets to committee and someone finds that a critical bit of information is not present, that will only slow down the decision-making process. That is why it is essential that all the information appropriate to an application be gathered and presented to the committee in a timely manner. That is why we have suggested the amendment.

10 am

Amendment 64 would ensure that that is a decision that rests with the local authority, so it is about getting some balance back into the Bill. I am terribly concerned that the Government seem to be using a number of the clauses to hammer local planning authorities and make life much more difficult for them in already challenging circumstances. I hope that the Minister will take on board some of our points in the two amendments. As my hon. Friend the Member for Scunthorpe said, the Opposition are genuinely trying to be helpful at all times. We want to see those important NPPF paragraphs implemented, and we want requests for information to be appropriate and in the determination of the local authority, rather than of the Secretary of State, the Minister or developers, which is what the current wording of the clause implies.

Nick Boles: I thank the hon. Lady for asking questions that, while in the main misplaced, make it clear to me that we might need to explain from the start why the provisions are necessary in addition to the measures in the national planning policy framework.

To go back to where things started, the Killian Pretty review was commissioned by the previous Government in 2008. It identified a need for the Government to tackle the increasing complexity in information requirements, with case study research indicating a variation in the consistency and reasonableness on the part of local authorities in information requests. Case study research carried out as part of the Killian Pretty review found that almost half—48%—of the cases surveyed had a problem with the registration procedure, with 20% reporting substantial problems causing delay and exhibiting poor practice. That is why the review recommended that changes be made, to clarify and tighten the definition of the information that could be requested in advance or alongside a planning application.

The hon. Lady said, "All of us want information requests to be reasonable", and I am sure that the Committee and most people outside agree. The question is how to achieve that. She is right to say that in paragraph 193 of the NPPF we make it clear that local authorities should indeed be seeking information relevant to the planning decision. The fact remains, however, that the current statute that applies to information requests for planning applications is much less clear and much broader, which has led to some rather difficult judgments, not least the memorably named Poostchi judgment of 2009, which effectively found that the statute gave extraordinarily broad powers to local authorities, basically to ask for any information that they wanted. The problem is that the NPPF on its own is insufficient to overcome the precedent that that judgment created based on existing statutes.

Our intention, both through the Bill and the secondary legislation that will swiftly follow, is effectively to restore what used to exist, which is a right of appeal for applicants where they feel that a local authority's requests for information, which then form the basis of its refusal to validate a planning application, are unreasonable. We need to start that process by adjusting the statutory framework, which is what clause 4 does. We are moving away from the position of the Planning and Compulsory Purchase Act 2004, which gives local authorities that broad power, and trying to narrow that down to make it consistent with what was set out in the NPPF. That will be accompanied by secondary legislation that allows applicants to appeal where an application has not been validated due to what they consider to be an unreasonable information request.

Simon Danczuk: The previous Planning Minister, whom I hold in high regard for doing a good job, sweated blood in pushing forward the national planning policy framework. The current Minister says that elements of it are not strong enough. What are those elements?

Nick Boles: The hon. Gentleman will understand that the NPPF was an incredibly important piece of work and I share his esteem for my predecessor—the Financial Secretary to the Treasury, my right hon. Friend the Member for Tunbridge Wells (Greg Clark)—who created the framework and shepherded it through Parliament with the help of many members of this Committee. However, it is not statute. There is provision for it to exist in statute in the Localism Act 2011, but it is not statute. Where there is statute that is uncorrected and unamended and which directly conflicts with it, that creates a problem that leads to judgments such as the one that I have mentioned. Given that we have the Bill and this opportunity, we are trying to bring the statute in line with the intention contained within the framework that the hon. Member for Rochdale was so complimentary about.

Nic Dakin: The Conservative-led Local Government Association is far from convinced about the need for clause 4. What discussions has the Minister had with the LGA's leadership about that?

Nick Boles: I have regular discussions with the leadership of the LGA and the leaders of many authorities of many political colours about different aspects of what is proposed. It is of course sometimes hard for local authority leaders who rise to positions of leadership with the LGA or other representative bodies to understand some of the dysfunctional behaviour that a few poorly run authorities can indulge in. Generally, those leaders tend to be running pretty tight ships; otherwise they probably would not have earned the respect of their peers and the elevation to various elected positions in their representative associations. However, the fact remains that the experience on the ground is of some unreasonable behaviour. This measure simply brings the statute into line with the intention of the NPPF, so that we do not find that court cases are being overturned.

I refer the hon. Gentleman to the evidence provided by the CBI and the British Chambers of Commerce. Katja Hall of the CBI said that

"sometimes…the information asked for seems to have little relevance to the application. We would support this clause and the test of reasonableness".

Mike Spicer of the BCC said that

"the evidence from our members and from Professor Ball about the extent to which companies going through the planning application process have to rely on outside consultancy support is a reflection of the complexity of the system and how much information is required. Businesses are in a situation in which they have to hire outside experts just to understand the requirements." —[*Official Report, Growth and Infrastructure Public Bill Committee,* 13 November 2012; c. 27, Q54.]

The hon. Member for City of Durham made the important point that some larger developers have said they do not find the proposal such a problem. We are not just in the business of making the planning system work for very large developers. It is always the case that large companies can cope with regulation, whether of employment, planning or anything else, because they have whole departments that do just that. In truth, it becomes a bit of a competitive protection to them and a barrier to entry by smaller companies that want to do good things.

We have to make the system work fairly for all applicants and that includes the sort of businesses represented by the British Chambers of Commerce and others that do not have specialist departments that probably quite like the idea of getting all their environmental audits and bat reviews done and dusted up front, because they know that, at some point in the process, they will

be needed. We need to help those who are not necessarily in that position and make sure that they are not being prevented from developing.

Roberta Blackman-Woods: The Minister makes an interesting point about smaller development companies. Nevertheless, even smaller development companies need to provide the information that is appropriate to the development. Fairness does not relate only to the developer, but to the local community and the local community representatives charged with making the decision, and who need to have the correct and appropriate information in front of them so that they can make the decision.

The hon. Gentleman said that regulations will be underpinning the clause. I refer to the consultation on streamlining information requirements for planning applications that, I think, closed several months ago. Will the outcome of that consultation be known before the regulations are drawn up? It is only then that we can assess whether the regulations will tackle the particular issue that the hon. Gentleman raised.

Nick Boles: Before I give way to my hon. Friend the Member for Henley, I want to draw attention to the fact that the hon. Member for City of Durham is in a bit of a logical trap. Is she proposing a distinction without a difference, which is a distinction between appropriate and what is proposed under the clause, which is that, first, an information request should be reasonable and, secondly, that it should be relevant to the planning decision?

If there were something meaningful about the hon. Lady's alternative, which is "appropriate", presumably that suggests that something might be unreasonable or might not be relevant to the planning decision, but is somehow appropriate. I cannot believe that she honestly wants to suggest that applicants should be required to provide information that is unreasonable or not relevant to the planning decision.

"Or appropriate" is just another way in which to put "reasonable and relevant to the planning decision," in which case we will be better off to stick with the current wording because "reasonableness" and "relevance" are strongly tested legal concepts and will therefore not provide the judgments that have caused such a problem in the past. I hope that the hon. Lady will understand why we prefer to stick to our decision.

Ian Murray *rose—*

Nick Boles: Will the hon. Member for Edinburgh South bear with me? I just want to give way to my hon. Friend the Member for Henley, by which time I hope that I shall be able to answer the hon. Lady's second question about the regulations.

John Howell (Henley) (Con): I am glad to buy my hon. Friend a bit of thinking time so that he can respond to the Opposition. I take him back to the Killian Pretty report which identified such a problem. It identified that one size does not fit all, and that the way in which information requirements had been built up tended towards establishing them as a body of evidence that would be used in each case. That simply did not apply. The Library note makes clear the piecemeal nature of the legislative basis for such matters, and the provision is merely a piece of tidying up.

Nick Boles: I thank my hon. Friend. I might have set a hare running when I said that the clause was one of the most important in the Bill. He is right that it is a tidying-up provision. I happen to think that the tidying up is deeply significant. We have heard evidence, particularly from those representing smaller businesses, that this can be a huge burden on them. Small business representatives —developers and others—in my constituency have talked about being presented with a tick-box list, where a planning officer has ticked all the different audits, reviews and consultancy reports that they will require in the process, without much regard to the stage the decision had reached.

10.15 am

One developer made clear to me that the proposal can often become reasonable at the stage of detailed planning permission, but officers ask for it at the point of outline planning permission, when it is entirely unnecessary. Developers have to incur that cost when they have no outside financing in place; it has to come straight out of their equity reserves. It would be more reasonable to ask them to bear that cost when they have outline permission and therefore have the funding in place. Although such differences might seem small in legal terms they can be crucial for the viability of schemes for small developers.

Andrew Stunell (Hazel Grove) (LD): Does the Minister agree that there is an attitude in some planning departments of protecting their backs? If they do not tick every box they might find themselves at risk. For very small applications and ones where a bit of common sense should apply, it is just not necessary. If a building is on the top of a hill it probably does not need a flood assessment. There are plenty of other examples that we could all give from constituency experience.

Nick Boles: My right hon. Friend is absolutely right. I have some sympathy for the planning officers involved. The Prime Minister referred last week to the bane of judicial review creeping into every aspect of life. It is not entirely unreasonable for some planning officers to ward against any risk of getting into trouble by doing that. However, it has a corrosive effect on the cost of development and that is why we are trying to sort it out.

Ian Murray: Will the Minister give way?

Nick Boles: I am just going to answer the hon. Lady's question before I forget and then I will be delighted to come back to the hon. Gentleman.

With regard to the consultation, we are currently considering responses to the consultation on streamlining information requirements. We are looking to bring forward the regulations early next year. There will obviously be a proper process of looking at those. We are not going to start applying this provision until we have the regulatory support in place.

I have just acquired more detail. There will be two sets of regulations: one will be brought forward early next year for consultation in July, and one later, probably at the time of Royal Assent for the Bill. The latter will

[Nick Boles]

reintroduce the right of appeal. That package will, I hope, produce a situation that is streamlined, clear and fair.

Before giving way to the hon. Member for Edinburgh South, I want to refer to one more point raised by the hon. Member for City of Durham. She mentioned the importance for communities of being sure that all the necessary information had been provided. She is right, but it is also the case, as anybody who has served on a parish council knows, that sometimes a body can be presented with a yea-high pile of information and reports. Do they, as volunteers with busy lives and kids with homework to do, have the ability to wade through all that and form a judgment? We are trying to restore the balance so that everybody is able to access the decision-making process and give their views based on the relevant information that is reasonably required.

Ian Murray: I should like to go back to the body of evidence. The LGA said clearly in its response to clause 4 that what the Minister is portraying is very anecdotal. I should have thought the Minister would have come to the Committee and said, "Here are four examples across the country of where this has not worked and where the clause would help." He has yet to do so; perhaps he could.

I have a second point to make while I am intervening. Local communities are often in the best position to determine what is happening locally. Often they can tell a local authority that they think a bat survey should be done or that there are underground mine shafts that have been there a long time. When I was vice-convenor of a planning authority in Edinburgh, local communities would often come to the planning authorities saying, "We have the local knowledge to try to make these things better," which helped the developer.

Nick Boles: The hon. Gentleman quotes the LGA at me but then does not accept it when I quote at him two of the major business representative organisations which said, in evidence that he heard, that this is a positive clause. It has won their support and is needed because their members are affected by it. I trust them to have a view and that is why we are bringing forward a clause that directly addresses the recommendations of the Killian Pretty review, which was set up by the Labour Government and published in 2008. We are directly fulfilling those recommendations which in their last two years in office that Government failed to do. I hope that the hon. Gentleman would welcome it.

James Morris (Halesowen and Rowley Regis) (Con): I want to come back to the powerful point that my hon. Friend made about the benefits of the clause and the important principle that we should seek to reduce radically the amount of information needed to make a judgment about a planning application so that it is in a form and size that allows communities to properly interrogate it. The principle that underlies this clause and its linkage with the NPPF is powerfully articulated by my hon. Friend when he says it will help communities as well as developers.

Nick Boles: Exactly. It is often the case, as my hon. Friend points out, that these sorts of bureaucratic overload do not help anybody. They do not help the applicants because it costs them a huge amount of money to put it through. They do not help the planning authority because the process of determining a planning application is also extremely expensive. We all know that the fees that authorities get for a planning application do not cover the full costs and they rely on Government grant, which is fixed and not related to the amount of work involved in an individual application. And it does not help the communities who want to comment. It does not help anybody and that is why the role of Government is to clarify, simplify and ensure that the process is reasonable.

Roberta Blackman-Woods: The Local Government Association and others are asking for some evidence as to why the clause is necessary. Let me take the Minister back for a moment to the point made by the Prime Minister about judicial review and planning applications. We now know that judicial reviews of planning applications are about 1% of all judicial reviews. So why the Prime Minister highlighted it as an issue is quite beyond me. What it shows is that the evidence base does not necessarily concur with the Minister's views or with the anecdotal evidence. We are asking the same thing about what underpins the clause.

Where is the evidence base? In particular, has the Department carried out a survey of the local authorities that use planning portals for their information on their websites? A number do, and it enables information to be interrogated without everything having to be downloaded and without there having to be a huge lot of paper available to parish councils or anybody else who might want it. Indeed, the form of the information is important as well. That is not mentioned at all in the clause. Is it intended to put all of this in regulations?

Nick Boles: I confess that I am slightly amazed by the approach the hon. Lady is taking. The Government whom she supported set up a review. The review said, "There is a problem with this. Do something about it." Yet they did not. We introduced the national planning policy framework, which they now claim to support, although I do not seem to remember them supporting it when my right hon. Friend the Member for Hazel Grove and others were taking it through the House. *[Interruption.]* They certainly had a pretty funny way of showing it. They have admitted that that makes it clear that what we are proposing today is the reasonable position, and they were therefore asking, "Why is it that somehow the framework is not applying?"

The hon. Lady has completely failed to explain how "appropriate" is either meaningless, because it is the same as "reasonable" or "relevant", or meaningful, in which case something can somehow be appropriate but unreasonable and irrelevant. She is saying that we have no evidence for that when I have already given her quotes from an evidence session in which she sat and asked the witnesses—the CBI and the British Chambers of Commerce—questions; I did not ask them any questions. I have given her an awesome example. If she prefers anecdote to the evidence of the people employed to represent the business community, I have also given her an anecdote from my constituency, and without a doubt, we can all give her more anecdotes.

There is plenty of evidence to show that the provision is long overdue. It was a product of a review set up by the hon. Lady's Government. I hope that she will withdraw the amendment, which would add nothing and would provide, if anything, obfuscation to the clause. I hope that she will allow us to get on with the job of ensuring that the planning system works for developers large and small, for local authorities that want to help growth happen in their communities, and for local people who want to be able to respond to relevant information, not irrelevant twaddle.

Roberta Blackman-Woods: There is a difference between evidence and opinion. We got a lot of opinion; what we did not necessarily get was evidence, hence the nature of my question.

Nick Boles: The hon. Lady is prone to use quotes as evidence when they support her arguments, and suddenly they become opinion when they support mine.

Roberta Blackman-Woods: I do not agree with that observation.

What we know from what the LGA has said is that the clause is redundant. From what we have heard from the Minister, it will be useful to see the outcome of the consultation on streamlining information requirements and the regulations in due course. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 4 ordered to stand part of the Bill.

Clause 5

Modification or discharge of affordable housing requirements

Mr Raynsford: I beg to move amendment 50, in clause 5, page 5, line 31, after '(1)', insert 'Subject to subsection (1A),'.

The Chair: With this it will be convenient to discuss amendment 51, in clause 5, page 5, line 32, at end insert—

'(1A) This section does not apply to planning obligations relating to article 1(5) land as defined in the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418).'.

Mr Raynsford: Clause 5 is concerned with section 106 agreements. Every member of the Committee will know that the clause has attracted widespread criticism, not least from the witnesses who gave evidence to our Committee. There were three broad grounds for objecting to the clause.

The first is the obvious concern that it would further reduce the supply of affordable housing, which is already woefully inadequate. We heard from a significant number of people with different perspectives, including the Royal Institution of Chartered Surveyors, whose written evidence made it clear that it was concerned; the National Housing Federation; and local authorities, all of whom feared that the outcome would be to reduce further the already inadequate supply of affordable housing.

Secondly, we heard evidence that the Government's analysis when bringing forward the clause was fatally flawed. The Government saw the affordable housing component as the only factor likely to lead to the stalling of development schemes, or at least their analysis identified the affordable housing component in section 106 agreements as the only part that would be subject to renegotiation as part of the process, whereas we have heard evidence from very many other sources, including in particular the Local Government Association—it ought to know—and the planning community, that a very wide range of factors could result in a scheme being stalled because it was seen to be unviable, and that it was quite wrong to single out affordable housing as the only area subject to renegotiation or change on appeal, as is provided in clause 5.

10.30 am

Anyone on the Government Benches who is defending the clause would do well to remind themselves of the evidence of the Local Government Association—both what its representatives have said to us and also its written evidence. It is a most damning indictment of a Government who claim to be supporting a localist agenda. They really have not got their ducks in a row, if I can put it in that rather crude way. They have managed to alienate almost the entire local government community, including their own supporters in local government, who believe that this is an inappropriate and ill-advised Bill, particularly this clause.

The third objection to clause 5 is that it will have some perverse, and hopefully unintended, consequences, some of which were identified during the evidence sessions. I hope that Ministers will recognise that and be prepared to accept amendments that are intended to avoid some of those perverse consequences. This group of amendments is in exactly that line. The amendments deal not with the overall thrust of the clause—we will debate that later—but with the potential impact on the exception sites policy in rural areas. This is a narrow and specific series of amendments designed to deal with a narrow and specific, but damaging, potential consequence of the clause.

Perhaps I should start by describing what the exception sites policy is. It is defined, helpfully, in the national planning policy framework:

"Rural exception sites: Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Small numbers of market homes may be allowed at the local authority's discretion, for example where essential to enable the delivery of affordable units without grant funding."

There, we begin to get to the nub of the policy. It has been in existence for over 20 years, it has had bipartisan or cross-party support—I know of no political party that has objected to it or found it inappropriate—and it has facilitated the supply of substantial numbers of homes meeting real needs in rural areas, by making exceptions to allow the development of housing where it would otherwise not be permitted.

If I describe how the policy works, that will hopefully make it easy to understand. In particular rural areas there is a presumption against housing, for a variety of reasons—because we are dealing with a national park,

an area of outstanding natural beauty or an area where the countryside would be compromised by the commercial development of large numbers of market homes. However, in such areas there may well be a need for a small number of homes to meet the needs of the local community. There may be a need for homes for the sons and daughters of existing residents, for example, to keep a village community alive, or for individuals who need to work in that area because their job, although not well paid, is essential to the economy and community of the area. The exceptions policy emerged as a counter-intuitive but sensible approach to providing for those needs by saying that although there would normally be a presumption against housing development in an area, development would be allowed in exceptional circumstances because it would meet a pressing social, and in some cases economic, need.

We heard from Dr Nigel Stone of the English National Park Authorities Association. In his evidence on the importance of that policy he said, "The majority of us"—his members, the national park authorities—

"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."

He went on to express his worry about clause 5. He said:

"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."

The current scheme works on that basis, but if that hope value were suddenly to become larger because the exception depending on the section 106 agreement were to be modified, it would open up the possibility of other development and entirely undercut the basis of the policy. Dr Stone emphasised how the policy depends on all parties agreeing. He said:

"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."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 20 November 2012; c. 147, Q336.]

Roberta Blackman-Woods: Does my right hon. Friend agree that we clearly need to know—this should have been in the impact assessment—the impact that the clause may have on affordable housing in rural areas?

Mr Raynsford: I am grateful to my hon. Friend for her question. The impact assessment, I believe, suggests that there could well be an impact on the supply of affordable housing in rural areas. I do not have the numbers immediately to hand, but perhaps the Minister could give a more detailed answer in his response.

Ian Murray: Let me take my right hon. Friend back to the points he made on viability and land values. Is it not the case that, although removing a section 106 agreement for one particular planning application may make it more viable under legislation, the potential long-term impact on land values, particularly in rural areas, could be an increase that would make future affordable housing requirements less viable and more difficult to achieve?

Mr Raynsford: My hon. Friend makes a good point, but there is actually a more fundamental problem, which is that the viability argument could entirely destroy the whole basis of the policy. That basis is confidence on the part of the landowner that when a site is made available below market value, there will not be a windfall gain at some future date to someone who simply happens to be the lucky occupant at that time. The section 106 agreement, which guarantees in perpetuity that the site will remain available only for defined needs, essentially depresses the land value in the long term.

My hon. Friend makes the good point that removing a section 106 agreement would ultimately open up the market to higher values and so be self-defeating, but it would be even more self-defeating in totally destroying the confidence of landowners who currently believe that they can make sites available at less than market value for good social and economic reasons for their area. It may then be that, as a result of a whim at a future date, someone will gain a windfall, but the policy will be destroyed. Of course, the impact of that will inevitably be to take away any confidence whatever on the part of landowners that it is worth their while disposing of sites at below market value in the interests of meeting the needs of their community. Why should they do so if someone else is going to get a windfall gain at some future date, over which they have no control?

Nic Dakin: My right hon. Friend is spelling out these difficulties very clearly. Can he assist me in understanding whether, as currently drafted, the thrust of the clause goes against the power of localism and his amendment will rebalance things back in favour of localities?

Mr Raynsford: I certainly can. Of course, I have to qualify that by saying that, in moving the amendment, I made it clear that it only deals with a relatively small, specific issue. It does not deal with the wider attack on localism implicit in the clause, which we will debate in future. Amendments 50 and 51 would restore to the local community the ability to determine that there shall be affordable housing, that it will be protected in perpetuity, that landowners who release land at below market value to make that possible can be reassured that that will continue, and that someone else will not make a windfall gain simply by subverting the section 106 obligation to retain the property in perpetuity for affordable housing or local economic needs.

I would like to explore how the clause would work, because it is dangerous. It would allow a developer, after the grant of planning consent subject to a section 106 obligation, to apply for that obligation to be either modified or lifted. There could be a scenario in which a plot of land has been made available at below market value to provide for the affordable housing needs of a community, and it has all been agreed and everyone is happy with it. However, subsequently, the developer could decide that the site is not viable, and that the way to deal with that is to seek to reverse the section 106 obligation. There is no difficulty whatever in seeing the incentives for a developer, in a situation where he suddenly sees the opportunity for a substantial windfall gain through the property becoming a market property once again, to apply for the section 106 obligation to be varied.

The test, as I understand from reading the Bill, is viability. It is not about social sustainability or meeting the needs of the community; it is purely about viability. We are in some difficulty here, because we do not know what the definition of viability is going to be. This is yet another example of how this hopelessly inadequately prepared Bill has been rushed through without proper preparation. We are told that we will get the definition of viability from the Government when they finally get around to thinking about what it should be. We are, to some extent, in the dark here. I hope that the Minister can cast a bit of light on how the Government are approaching the definition of viability, but at the moment we are having to fly blind, because we do not know what it will be.

Ian Murray: Would my right hon. Friend be gravely concerned if the test for viability were drawn up in such a way that a developer must make a margin of 25% on any development that they do? Viability would therefore become about profitability, rather than the delivery of homes or affordable homes.

Mr Raynsford: My hon. Friend makes a good point. I have no doubt that some developers would like there to be a definition guaranteeing them a return of 25%, but hopefully the Government would resist that. However, we do not know. I have to say that, like my hon. Friend, I am in the dark, because we are told that this is all going to be decided on a test of viability, but we do not know what the definition of viability will be. As I said, it is a further illustration of the rushed preparation of the Bill and the inadequate definition of some of the key concepts in it.

In the absence of clarity on viability, let us at least consider one possible scenario. The Minister can help, if he would like, by telling me if he thinks it is not possible. If he does not do so, I will assume that it is a viable, likely scenario that could happen under the circumstances that would apply if the Bill were to be enacted and clause 5, as currently drafted, put into effect.

10.45 am

The scenario goes roughly like this. In a national park—let us take a national park as an example because it was Dr Stone who gave the evidence to us—someone in modestly paid employment needs housing. Members will be able to think of possible scenarios involving people who are vital to the life of a local community, who need housing in the area but are not well paid. That person is not able to afford market housing, and there is not an adequate supply of social housing in the area. The only way in which that person will find a home is if he can secure the agreement of the landowner to release a plot of land at well below market value to provide, in this case, a self-build home. Dr Stone gave the example of individuals arranging to build their own homes.

The individual decides to do that. The landowner offers to release the land at agricultural value, rather than market housing value, and the applicant puts in the application to the planning authority. The planning authority, which in this case would be the national park, would normally not grant planning consent for new housing. However, in this scenario, the planning authority believes the individual is vital to the local economy—let us say it is an area of forestry and the person performs a useful task in relation to the forest—and so it is minded to agree to the consent. Of course, the one thing it does not want to do under any circumstances is to open the floodgates for a lot of other housing applications, which would change the character of the area and undermine its obligation to support the national park's natural beauty and protect its special quality. The planning authority accepts the exception, and therefore is minded to agree, but only does so with the section 106 provision that keeps the property available in perpetuity for affordable housing purposes, thereby preventing the individual from releasing the property into the market, realising a substantial capital gain and undermining the policy.

After securing consent, the applicant starts negotiating with developers and builders to get the house built, and discovers that the costs are beyond his means, even with the heavily discounted land values. It would actually require a considerable degree of restraint on the part of an individual in those circumstances, if clause 5 were part of the Bill as enacted, not to see that as an opportunity to get their house built—what a temptation. Clause 5 states that, if a development is stalled because of viability issues, it is open to the individual to go back to the planning authority and to say, "In these circumstances, please either modify or relax entirely the section 106 obligation."

I do not think that scenario is far from the bounds of possibility, and I note that the Minister did not challenge it. Let us think about what would happen if that individual goes back to the planning authority and says, "Under clause 5, I want you to revise the section 106 obligation because it is making it impossible for me to carry out this development viably." The authority may say, and I hope they would, "No. We gave you consent on the basis that it is for an affordable home in perpetuity. Those were the terms on which you sought our approval, and we would not otherwise have granted consent for housing in the area, so we are not changing it." The applicant then has the right to appeal to the Secretary of State, who will refer it to PINS, the Planning Inspectorate.

As I read the Bill, PINS has to consider this on the grounds of viability. That is not on the grounds of whether it is a desirable scheme, or on the grounds of whether it will have an adverse impact on the community if the door is opened to market housing in the area, and not on any other factors that may be relevant to the national park or that particular site, but solely on the grounds of viability. Again, the Minister may challenge me if I am incorrectly interpreting the Bill, but on my reading of it, it appears that the Planning Inspectorate has to consider this solely on the grounds of viability.

If the Planning Inspectorate does that, and the individual plus his builder produce very clear evidence that it is simply not possible to proceed with that house or development currently because of viability, I find it difficult to consider what grounds PINS would have to retain the section 106 obligation in full. It may seek to amend it, or it may agree that the obligation should be dispensed with, but, either way, the decision will utterly compromise the whole rural exceptions policy. That will not just be an issue for that individual case; it will be a dagger in the heart of the whole rural exceptions policy once it becomes clear that the premise on which the policy is based is gone. Once the confidence in the premise that the landowner can be confident in supplying

land at below market value that it will be available in perpetuity and that the land will not ultimately leech its way back into the market, which would give windfall gains to other people, has gone, because the Planning Inspectorate has overturned the rural exception section 106 agreement in one case only, the whole policy is holed below the waterline. There will be a total lack of confidence. Landowners will simply stop supplying land and developers in these areas will no longer believe it is viable to produce schemes. The policy will be killed at a stroke.

Ian Murray: My right hon. Friend is making an incredibly powerful argument with that particular example, but is it not also the case, reflecting on that example, that people could put in these planning applications in good faith to deliver what they seek to deliver, but the economic cycle, as we have seen in recent times, could change overnight? A perfectly viable project that has been put in under the best of circumstances could turn into an unviable project. They would appeal to make it more viable and the policy would unwind just by the nature of the economic cycle and the good faith of that developer.

Mr Raynsford: My hon. Friend makes a good point and he will have noticed that in the scenario I painted, I did not depict a wicked developer seeking to exploit loopholes; I painted a picture of someone acting in good faith who was prevented from proceeding on the basis that he had originally intended by economic circumstances. I did not spell them out: it may have been a change in the market or it may have been the difficult of getting a mortgage. There are all sorts of relevant factors.

I depicted a scenario in which someone had in good faith applied for property, but had then found that that was not possible and had used the clause 5 opportunity, which at a stroke had killed the rural exceptions policy. I talked about how landowners will, inevitably, take a different view of releasing land at below market value and how housing associations and others involved in providing housing in rural areas will be wary about coming forward with schemes if they can simply be transformed overnight into market housing at a stroke of the Planning Inspectorate's decision-making. The third impact must also be considered: why on earth would a local authority in a rural area, or a national park authority, ever consider granting consent for an exceptions policy again? They will obviously draw conclusions and say, "This is not a safe policy. The whole purpose could be subverted and we could end up with this property not being available for a forester who is needed to help the local economy. Instead, it will be a comfortable holiday home for someone who has bought it on the open market and just comes here a few weeks a year." That is exactly the problem that many such areas fear.

The consequence would not just be to destroy the policy, but also to halt the supply of affordable housing, because there will no longer be an incentive to use the mechanism to provide it. Nothing is less likely to help growth than that message. Although the issue is small and discrete, it illustrates how dangerous the clause is. In microcosm, it reflects how the whole Bill has been put together in a hurry, without provision being made for all sorts of serious long-term consequences that might do immense damage. The Bill also entirely fails to meet its supposed objective of stimulating growth.

I put it to the Minister that unless my scenario is incorrect, on which I await his reply, he has a problem. I hope, in response to the evidence that he heard—he was there when Dr Stone gave evidence—that he will accept amendments 50 and 51 or propose an alternative and possibly more elegant means of achieving the same impact. I am the first to agree that my amendments were put together in a hurry; I do not apologise for that because I am responding to a Bill that was put together in a hurry.

My amendments may not be the most satisfactory and elegant. I will be the first to acknowledge that and not to persist with them, if the Minister assures me that he recognises the problem and will act on it by introducing, on Report, an alternative amendment to close this very dangerous loophole. Otherwise, the clause will destroy a useful and effective planning policy that has delivered many homes in rural areas for people in need over many years, and has achieved cross-party support.

Nick Boles: I thank the right hon. Member for Greenwich and Woolwich for explaining his argument so fully and clearly. His amendments refer to a broader category than just rural exception sites, but he focused on them, so I will start by responding on that point. I very much share his view that such sites are incredibly important. They apply in relatively few places, but for those places they are vital. The Government absolutely do not intend to undermine a policy that provides desperately needed housing for people who live and work in national parks.

I am unclear about the logic of the right hon. Gentleman's case in relation to whether what he has said would actually happen. The way that affordable housing works under section 106 of the 1990 Act is that, effectively, a section 106 agreement demands a cross-subsidy from developers. Some of the profit they make from developing houses for market sale or rent has to be taken—either in the form of land or of a financial contribution—as a subsidy, so that affordable housing can be made available at affordable rents. In the case of a rural exception site, the whole site, by definition, is 100% affordable. No subsidy is therefore being offered by the market element in a development, because there is no market element.

Mr Raynsford *rose—*

Nick Boles: May I finish? The right hon. Gentleman explained his point of view, and I am genuinely trying to tease this out.

There is no market element to the development, so there is no cross-subsidy towards the affordable part of the scheme. I therefore fail to see how a change in market circumstances could have any effect on the viability of that affordable element. In the more normal cases that we will come on to—no doubt, we will debate them thoroughly—in which a commercial element provides a cross-subsidy to an affordable one, one can at least understand the logic of the argument that if the commercial element is no longer as valuable and does not make the expected profit, the subsidy is no longer affordable. However, in this case, there is no cross-subsidy or market element, so how can the change in market circumstances affect the viability of the scheme?

Mr Raynsford: I quoted early in my speech the definition in the national planning policy framework of rural exception sites. I remind the Minister of the final sentence of that definition in the Government's own document:

"Small numbers of market homes may be allowed at the local authority's discretion, for example where essential to enable the delivery of affordable units without grant funding."

11 am

Nick Boles: But I am not sure whether the right hon. Gentleman can have it both ways. Either there is a commercial element, in which case our broad argument about the Bill applies—that it is more important to get some housing built than to fetishise some target in an agreement—or it is 100% affordable housing, as some rural exception schemes are, in which case there is no market element that could have been made less valuable by market developments, so there will be no viability question and the inspector will have no basis on which to suggest that there should be a reduction in the affordable component.

Mr Raynsford: The Minister accuses me of trying to have it both ways, but that is what he is trying to do. A moment ago, he said that my argument did not stand because there was no market housing. I have pointed out to him that under his Government's definition, market housing can be agreed. It says so in the NPPF:

"Small numbers of market homes may be allowed at the local authority's discretion, for example where essential to enable the delivery of affordable units without grant funding."

The Minister's first line of argument has fallen. I am happy to discuss my scenario. I do not want offend you, Mr Howarth, by going on too long in an intervention, but I painted a picture where, having got consent, the developer or individual found that it was not possible to produce the home viably. I used two examples: first, that the builder came in with costs that were higher than anticipated; secondly, that it was difficult to get a mortgage in current circumstances. Those are equally plausible examples where it is not possible to proceed viably with a scheme that has been agreed with a section 106 exception.

Nick Boles: I am genuinely not trying to pick a fight with the right hon. Gentleman; I am trying to tease out what he is saying. It certainly seemed that he was focusing on those schemes that are 100% affordable housing. If he was, in fact, focusing on schemes with an element of market housing that provides a cross-subsidy towards a large element of affordable housing, the broad argument that we will be making for the clause over the course of the debate applies: is it not better actually to have some affordable houses that the person he described so well can move into and bring up a family in? Is it not better to get those built now, rather than to wait for some theoretical day, when the stars realign such that all the values underpinning the agreement that was reached a few years ago can be in place again?

Our view—which I accept is not his view or that of his hon. Friends—is simply that we are not in the business of fetishising agreements, targets or percentages. We want homes built. We want them built now, and if that means fewer of them can be affordable, because more of them have to be market, because market values have decreased and the potential for cross-subsidy has therefore declined, so be it. Let us get them built. We can always go back to those higher percentages and higher targets when values return in a few years' time.

Mr Raynsford: On a point of clarification, I argued my case on the basis of the individual pursuing an individual scheme without any other element of housing, but I quoted the national planning policy framework to make it clear that there would also be scenarios where a cross-subsidy between market housing and other housing could exist. Both are affected and both would be undermined by appeals that took away the section 106 protection. If that were to happen, the realignment of the stars that the Minister described will not generate any housing at all. It will put a total end to the very successful rural exceptions policy, because it will destroy confidence that those homes will be kept in perpetuity for affordable use.

Nick Boles: I do not accept the right hon. Gentleman's cataclysmic argument. He now has admitted that there are two possibilities, only one of which he addressed in his rather long speech. There is the 100% affordable eventuality. In that case, there is absolutely no reason to believe that changes in market circumstances will have altered the viability, because there is no market element in those schemes, so they are not at risk from the clause.

There is another element—a market element—that is providing a cross-subsidy towards an affordable element. Where that market element is no longer so valuable, it cannot provide the same level of cross-subsidy. We are, without any regret, suggesting that we would prefer some houses to be built now to satisfy the needs of the person he described, rather than wait until some future day when market values will possibly return to a point where they can support the same level of commitment.

In either case, I do not believe that the clause will have the pernicious effect the right hon. Gentleman suggests. If it did, why are not he and his colleagues criticising all the authorities, including many progressive Labour-run authorities, renegotiating section 106 agreements in just the way we are encouraging those few who are not doing so to do?

Mr Raynsford: I am sorry; this will be the last intervention. I put it to the Minister that I know of no example of a national park authority agreeing to renegotiate a section 106 agreement that guarantees in perpetuity the survival of affordable housing. If the Minister can give me a single example of one prepared to renegotiate now, I would be pleased to hear it, but I do not think he can.

Nick Boles: To be clear, I was talking about the general argument. Many authorities, Labour-controlled and others, are renegotiating section 106 agreements to reduce the affordable element, because the potential for cross-subsidy has been reduced.

Mr Raynsford: It is a different question.

Nick Boles: No, the right hon. Gentleman is suggesting that that will somehow completely destroy the whole basis of section 106 agreements and push up land values. He painted a cataclysmic picture, of which, I

[Nick Boles]

accept, rural exception sites are a small, but important part. He painted a generally bleak picture. I note no criticism from him of his authority, which has put in place such a renegotiation, or the authorities of the hon. Member for Rochdale and others that have done this. They are acting in the interests of their communities.

Simon Danczuk: Will the Minister give way?

Nick Boles: No, I will not. [Hon. Members: "You mentioned his constituency!"] I will finish my sentence if I may, and then I will give way. All the clause does is try to ensure that all authorities behave reasonably and pragmatically, like most authorities, including those of the right hon. Gentleman and the hon. Gentleman to whom I am about to give way.

Simon Danczuk: I thank the Minister for giving way. On four occasions, he has mentioned my constituency, and specifically a site in my constituency—once in the Communities and Local Government Committee. On three occasions, he has referred to the Akzo Nobel site in Littleborough, where the council renegotiated the section 106 agreement to enable housing to be built there. Local constituents of mine in Littleborough have grave concerns about the site and the development. Given that he has taken such a keen interest in that particular site and development that he has mentioned it on four occasions, I urge him to meet my constituents and speak to them about their concerns over the site.

Nick Boles: The hon. Gentleman does me a disservice; I am sure that I have mentioned it more than four times. No doubt, by the end of the proceedings, it will be many more times than that.

The Chair: I hope not.

Nick Boles: I accept your reproof, Mr Howarth. I will of course be delighted to meet the hon. Gentleman's constituents to try to understand their concerns.

To return to the right hon. Gentleman's amendment, I want to be clear that the rural exception sites policy is extremely important, but he has framed his amendment in a rather broader sense and it does not have merit with regard to the conservation areas and other sites. We are about to have that broader debate. I accept however that there are particular circumstances with rural exception sites. I will not be able to encourage my hon. Friends to accept his amendment now, but I am absolutely open to hearing further arguments and to having further discussions to see whether I can understand why I am wrong and the right hon. Gentleman is right about how it will operate within the particular circumstances of national parks. We want to protect such communities and their ability to provide housing for local people. I encourage him to have that discussion with me and with officials, and I hope that, on that basis, he will withdraw his amendment.

Nic Dakin: I very much welcome the Minister's comments towards the end of his speech. I think we were all surprised by Dr Stone's evidence: the issue had not occurred to us, and my right hon. Friend the Member for Greenwich and Woolwich was as surprised as everybody else. When we interrogated Dr Stone, it became clear that this is a genuine issue, so if the Minister is saying that he recognises there is a genuine issue and that he is willing to work cross party to find a resolution that would meet the concerns of the likes of Dr Stone, who is probably one of the few people who know what they are talking about on this issue, I would welcome that.

Nick Boles: Let me be very clear: I am not necessarily saying I recognise there is a genuine issue, but I certainly recognise that rural exception sites are exceptional, that they matter a great deal and that the people who have given evidence are genuinely sincere, so I want to go through a process of understanding whether there are, indeed, issues that we need to deal with. I am not yet persuaded that there are; I am just leaving open the possibility that I may be persuaded that there are, and I recognise the importance of this.

Roberta Blackman-Woods: It is always dangerous to go into the territory of fetishes, and I hope we will not do that again. That aside, I know there is something in the impact assessment about the clause, but could the Minister give us more information about it? Could he give us projections of the impact on rural communities in the longer term, should the scenarios that my right hon. Friend suggests come to fruition? I think the impact on the number of affordable houses available could be huge.

Nick Boles: I have asked officials for more information about the number of rural exception sites, as well as for a bit of an understanding of the extent to which they are 100% affordable and the extent to which they have the cross-subsidy element we were talking about. I had not actually understood until right now that there are rural exception sites outside national parks; I thought they were all in national parks. It is because this is quite a complicated, but tightly defined, area that we are not trying to reach a settled position now. I am not yet persuaded of the right hon. Gentleman's case, although I absolutely accept that he makes it in all sincerity. I suspect we will not reach agreement on the clause in its broad application, but there may be some room for agreement on this specific application, and I would like to explore that with him after we have finished today.

Ian Murray: The Minister is being generous in not only taking interventions, but dealing with our points fairly. Will he reflect on the issues around land values, specifically with regard to my right hon. Friend's amendments, because that is key to unlocking some of the most significant affordable housing sites in rural areas? That should be looked at as part of our considerations.

Nick Boles: I am happy to look into all the questions the right hon. Gentleman and the hon. Gentleman have raised. In assessing viability, we absolutely do not want, on the one hand, to set a thousand hares running by charging the Planning Inspectorate with looking at a huge range of issues; by definition, we do not want to reopen the entire negotiation that has led to a planning application that we are all trying to see brought forward.

On the other hand, in the case of a rural exception site, which the right hon. Gentleman discussed, it is legitimate to ask whether exactly the same criteria can be applied as will be applied under the clause to, shall we say, normal, more run-of-the-mill developments. That is the kind of issue I hope we can discuss and try to reach agreement on.

Mr Raynsford: I was initially rather disappointed that the Minister's view was that I had not managed to explain the case sufficiently clearly, so he was not in a position to reach a judgment on it. However, I hear what he said about listening to further views and evidence. I was particularly struck by his thought that different criteria might be adopted in rural areas, national parks and areas of outstanding natural beauty and his willingness to listen to further representations. If I can take it from him that he would be happy for me to bring a delegation of experts in the field from the rural communities to see him on this subject—he is nodding so I accept that as assent—I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

11.15 am

Adjourned till this day at Two o'clock.