PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

GROWTH AND INFRASTRUCTURE BILL

Eighth Sitting

Tuesday 27 November 2012

(Afternoon)

CONTENTS

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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

(Afternoon)

[Mr George Howarth *in the Chair*]

Growth and Infrastructure Bill

Clause 5

Modification or discharge of affordable housing requirements

2 pm

Roberta Blackman-Woods (City of Durham) (Lab): I beg to move amendment 65, in clause 5, page 5, line 34, after 'may', insert

'after the expiry of the relevant period'.

The Chair: With this it will be convenient to discuss the following: Amendment 6, in clause 5, page 5, line 42, at end insert—

'(2A) An application made to an authority under subsection (2) shall be subject to a fee, which must cover costs incurred in determining whether paragraphs (a) or (b) of subsection (3) apply, including the costs of any specialist advice.'.

Amendment 8, in clause 5, page 6, line 15, at end insert—

'(4A) Second or subsequent applications made to an authority under subsection (2) shall be subject to a fee.'.

Amendment 66, in clause 5, page 7, line 21, at end insert—

'"relevant period" means—

(a) such period as may be prescribed; or

(b) if no period is prescribed, the period of two years beginning with the date of the planning permission for the development.'.

Roberta Blackman-Woods: I am indeed glad to serve under your chairmanship again, Mr Howarth, and to have got here through what I think was a fire, or at least a fire alarm, in Portcullis House. I have some real issues to raise about the inclusion of the clause at all, but I will save those remarks until the clause stand part debate. At the outset, I want to make it clear that our amendments aim to limit the damage and curtail aspects of this clause that could have huge consequences for the delivery of affordable housing, and could hinder the creation of mixed communities in our society.

Amendment 65 acknowledges that, during tough economic times, there may be a need in some instances to review planning obligations to ensure that developments can continue. Indeed, in earlier deliberations, we pointed out that several local authorities are already voluntarily undertaking renegotiation and that this is a helpful way forward. We are trying to prevent a set of circumstances from emerging and that is why amendments 65 and 66 relate to the period of time that planning permission must be in place before a request can go forward for renegotiation. That is important because, if a period of time has not elapsed, we have to question why viability would have changed. We think it is rather odd not to specify a particular time period. We do not want a developer to get planning permission and then a month later decide for whatever reason that viability is no longer what it was and bring forward a request for renegotiation.

The National Housing Federation suggests that the clause should allow the Secretary of State to prescribe a period before which an application to modify can be made. That would bring the measure into line with the existing power to vary planning agreements. The amendments seek a default period of two years before the power of the Secretary of State to amend an application according to economic conditions can be applied. That seems a sensible and straightforward measure. We want to hear why the Minister feels that it would be appropriate for an application to be granted by a local authority one week and then in the subsequent week for an application to be made to the Secretary of State to renegotiate the planning application. That does not seem a very sensible approach. I look forward to hearing what the Minister has to say.

Mr Nick Raynsford (Greenwich and Woolwich) (Lab): I rise to speak briefly about amendments 6 and 8, which are about costs. As I think everyone understands, this is not a cost-free process and there is a question about how those costs are to be met. The amendments would make it clear beyond doubt that there must be a fee associated with an application under the clause, and that that fee should be so structured as to allow for cost recovery, including the cost of the expert advice that may be necessary to carry out the assessment.

Just to remind the Committee, the assessment that is prompted by an application under the clause is of whether the development that has already been approved is economically viable, and specifically whether that viability or non-viability reflects the affordable housing component in the section 106 agreement. I suspect that most local authorities would be reluctant to form a judgment on that without obtaining expert advice. They will almost certainly want to put this question to consultants, and there will probably be a need to consider the views expressed by the applicant and the applicant's consultants, who will almost certainly have a view on this matter.

As I highlighted in our earlier debates, we do not yet know what the definition of viability—a definition that all the parties will have to work to—is going to be, but I will not go into that territory for fear of incurring your wrath, Mr Howarth. I will simply say that this is an area of uncertainty, but there could be a significant cost attached to the process of assessing economic viability, and it seems quite wrong in a time of constrained resources for local authorities to have to incur that cost without any contribution from the developer. So the purpose of the amendments is to say that, where an application is made, there should be a fee, and indeed if there are further applications—the clause allows for second and further applications—fees should also apply in those cases.

I have left aside fees for referral to the Planning Inspectorate on appeal. I am sure that the Minister will also want to reflect on whether that is a sensible element to incorporate in the Bill, but that is outwith the remit of my amendments, so I will say no more about it.

I hope that the Minister will provide clarification even if he cannot accept my amendments, because it seems reasonable that the costs should be met, and met by the body that has the potential advantage in applying for a reconsideration, which is the developer.

The Parliamentary Under-Secretary of State for Communities and Local Government (Nick Boles): I hope, Mr Howarth, that unlike me you were able to enjoy the feast that was on offer celebrating Lancashire. Unfortunately, the hon. Member for Rochdale, who represents a constituency in the fair county of Lancashire, is not here with us, as he was this morning. However, today is Lancashire day and I know that there was a great feast downstairs.

Let me address the amendments. The difficulty that I have is that, if Opposition Members had made any pretence of supporting the clause, I might be more open-minded about viewing the amendments as helpful suggestions on how to improve what is a very good measure. However, since I know—they have made it very clear—that they think that the clause is an abomination, and that they will argue ferociously against it, I am slightly inclined to look at all suggestions from the hon. Member for City of Durham and the right hon. Member for Greenwich and Woolwich as spanners that they are trying to chuck into the works, or as sand that they are trying to chuck into the engine. Nevertheless, I will try to deal with the substance of the amendments, even though I start out with a little cynicism about the underlying motives.

Roberta Blackman-Woods: I hope that the Minister accepts that it is entirely possible for us to disapprove totally of the clause, but nevertheless seek to make it better.

Nick Boles: What is possible in the mind of a Labour politician never ceases to amaze me, so I am delighted to admit that that, too, might be possible.

The right hon. Member for Greenwich and Woolwich moved amendments 6 and 8, which are about fees. As a very experienced former Minister in the Department, he will be well aware that the general power to provide for fees in relation to any local planning authority function exists under section 303 of the Town and Country Planning Act 1996, so there is no need to include such a provision in primary legislation in the way in which he proposes. That power exists, and it is something for which we could provide if we were persuaded of the merits of doing so. I shall not deny that the process of undertaking a review of the viability of the 106 agreement and the affordable housing component thereof will have some cost. It will take up some people's time and, as the right hon. Gentleman said, it might even take up some of the consultant's time.

I am very much aware of the fact that the process of reaching agreement in the first place tends to be expensive. It is fully charged to the developer and is often quite significant. I have even been told of a case when a section 106 agreement on the change of use of a single unit incurred a cost to the developer of £1,500 to cover the council's legal fees. When developers have already paid all the costs in full, I am a little nervous about adding to their burden because the whole point of the Bill is to free up the system.

The Bill's overall intention is for those few local authorities that do not do sensible things of their own accord to do them for fear of others doing those things for them. I would much prefer not one section 106 affordable housing scheme to be referred to PINS. That is my first best outcome from the Bill. I want to encourage local authorities to reach negotiated agreements and, in any such negotiated agreement of a 106 affordable housing scheme, to be absolutely at liberty to say to developers, "Yes, we are willing to look at it. We are willing to revise the affordable housing component but, as part of that, you have to pick up our cost in doing so" in cases when those developers had said, "This is difficult for us. We can't build it. We can't afford it." That would be completely open to local authorities under the negotiation. I want to make the negotiated route more attractive to them than the route for which we are providing in the Bill, hence my reluctance to accede to the right hon. Gentleman's suggestion.

Mr Raynsford: The Minister justified his position by saying that the costs were fully covered by the fee. However, I remind him that when we debated clause 1, he said that the costs were not fully covered by the fee so local authorities should have no objection if cases were routed away from them to the Planning Inspectorate. Will he be consistent and argue either that the fees are fully satisfactory in all cases or that they are not? He cannot have it both ways.

Nick Boles: I will have to get further advice from officials just to make sure that I am not saying something that is not absolutely true. However, my understanding—which might be corrected—is that I was referring to the formal fee for a planning application of a different scale or whatever, and that further fees can then be charged for the negotiation of specific 106 agreements. Often, obviously by agreement, that will cover the full costs that are phased by the authority plus its external costs of consultants and legal fees. I shall receive confirmation of that response. I am still not entirely persuaded by the amendments at this stage.

I emphasise to members of the Committee that the general power exists and it would be something that we would look at again—which I do not want to happen—if many such reviews were being carried out and there was evidence that local authorities were suffering unfairly as a result.

As for amendments 65 and 66 on timing, the hon. Member for City of Durham made a good argument when she asked, if a local authority had reached an agreement one week, why it should be possible the following week to have that agreement reviewed and potentially revised. It would be pretty foolish of developers who thought of making an application to the local authority to have the agreement reviewed and revised. The local authority almost certainly would not agree to that process because it had reached an agreement about it only a week before and there had been no demonstrable change in circumstances to undermine the viability of that agreement.

If the developers then appealed to PINS and went through an expensive and laborious process, they would almost certainly end up with a flea in their ear, possibly plus an award of costs by PINS for having acted unreasonably. I do not believe it is necessary—this may

[Nick Boles]

be a philosophical difference between our two sides—to legislate for every aspect of foolish behaviour. So long as foolish behaviour carries its own cost to the people who are being foolish, we can, broadly speaking, allow them to draw the relevant conclusions without legislating for it.

2.15 pm

Roberta Blackman-Woods: I am trying to follow the Minister's logic. He is prepared to legislate, with all that that entails and with all the time that we are all putting into it, to address the behaviour, as he sees it, of a handful of local authorities that are perhaps not acting in the best or wisest way possible, but he will not accept even the tiniest amendment to address what could be foolish behaviour by a handful of developers.

Nick Boles: My argument is that there are other ways to prevent such foolish behaviour. Using this legislation will not be painless for developers; they will not bounce out of bed in the morning and think, "Yippee! We are now going to go and re-appeal all of our section 106 agreements." Those agreements were laboriously negotiated, which is an expensive and time-consuming process for developers. Remember that they make money from building houses and selling or renting them. Sometimes, they might sell on the site with permission, but generally speaking that is how they make money. Their interest is in doing things that make that happen more quickly, not in doing things that just take up time and frustrate everyone. I do not entirely accept the argument.

Nic Dakin (Scunthorpe) (Lab): I share the confusion of my hon. Friend the Member for City of Durham that needs must in the larger scale, but that needs must not in the smaller scale. I accept the Minister's scepticism about proposals from the Opposition, but the National Housing Federation has welcomed the two amendments. Surely the Minister should listen to such knowledgeable people.

Nick Boles: The hon. Gentleman knows a lot more about this than I do, but there is almost no one in the field for whom I have greater respect than I do for the chairman of the National Housing Federation. Even with the greatest minds, every now and then I have to agree to disagree. On this, I am not yet persuaded.

This is a point of clarification, and it may not be complete, in which case I will come back to the right hon. Member for Greenwich and Woolwich. I confirm that local authorities have the discretionary power to charge costs both for drawing up a section 106 agreement and for renegotiating such an agreement, but that is not prescribed. They are able to do that only if they renegotiate on a voluntary basis. It is reasonable that they are able to secure proper compensation for the work they have to do if they enter a voluntary process. That is an incentive that I want to keep in place for doing it through a voluntary, negotiated route.

Mr Raynsford: I am grateful to the Minister for that clarification. What incentive will there be for developers to agree to a voluntary fee being payable in such circumstances? As I read it, the clause, as drafted, contains no downside risk. It is not possible for the outcome to be a more burdensome obligation, so the developer has absolutely everything to gain and nothing to lose. Why should they enter an agreement to pay the fee?

Nick Boles: This may enrage Labour Members, but I find that one concept they sometimes find difficult is the idea that time is money. Delay has a real cost for people in business, because of the cost of capital and the way it works. If business sits around, capital burns a hole in its pocket. That is the reason why, broadly speaking, we heard in evidence that, in relation to other clauses and other changes the Government are making, there are many developers who, even when we create an opportunity to take an application direct to PINS, either under the clause 1 registration of poorly performing authorities process or under the broader definition of "major infrastructure," will not choose to do so. That is because they know that if they have a good relationship with a good authority where they know the people, and it is all conducted very commercially and sensibly, it is in their direct financial interest to stick with that route, because time costs money. Again, I believe that the incentive is clear—a voluntarily negotiated agreement will always be preferable for a developer if the authority is willing to provide it, as so many are. On that basis, I urge both hon. Members to withdraw their amendment.

Roberta Blackman-Woods: I have heard what the Minister has to say, and I will go away and look at the disincentives that he claims are already in place for developers wishing to bring forward very quickly an application to modify when a planning application has recently been agreed. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Roberta Blackman-Woods: I beg to move amendment 67, in clause 5, page 5, line 38, leave out from '(c)' to 'in' in line 40.

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

Amendment 68, in clause 5, page 6, line 3, leave out 'means' and insert

'is assessed by the local authority to be the foremost reason'.

Amendment 7, in clause 5, page 6, line 9, at end insert—

'(3A) The Secretary of State shall make an order by Statutory Instrument setting out the criteria by which viability is to be assessed.

(3B) An order shall not be made under subsection (3A) unless he has consulted those persons or organisations he considers to be appropriate and a draft of the Order has been laid before, and approved by resolution of, both Houses of Parliament.'.

Amendment 69, in clause 5, page 6, line 9, at end insert—

'(3A) An authority can only make a determination in accordance with subsection (3)(a) if it is satisfied that—

(a) it would not result in the development being in material conflict with the strategic policies of the development plan, and

(b) an alternative form of development in accordance with the development plan would not be economically viable.'.

Amendment 9, in clause 5, page 6, line 35, at end insert—

'(6A) Subsections (6)(b) and (c) shall not prevent the planning obligation being modified so as to change the timing of payments.'.

Amendment 71, in clause 5, page 6, line 39, at end insert—

'(7A) Where the local authority has reasonable grounds to believe that the value of the land, on which planning consent with a planning obligation that contains an affordable housing requirement is placed, has risen and the original obligation has not been reasonably met at the end of one year they may—

(a) determine that requirement is to have effect subject to modifications,

(b) determine that the requirement is to be replaced with a different affordable housing requirement, or

(c) determine that the requirement will be subject to review within a given time period.'.

Amendment 72, in clause 5, page 6, line 41, leave out

'guidance issued by the Secretary of State;'

and insert

'regulations, subject to consultation, setting out the criteria upon which viability, for the purposes of this section, is to be assessed.

'(8A) Regulations under subsection (8) shall be in the form of a statutory instrument and shall not be made unless a draft of them has been laid before and approved by both Houses of Parliament.'.

Amendment 76, in clause 5, page 7, leave out lines 46 and 47 and insert—

'(6) Sections 106BA(5)(c) (removal of requirement) and 106BA(5)(d) (discharge or affordable housing requirement) do not apply under this section.'.

Roberta Blackman-Woods: This is a large group of amendments, but they are all very important, so I hope the Committee will bear with me as I go through them as quickly as I can.

Amendment 67 allows the affordable housing requirement to be modified during the renegotiation, but not removed. It will already be clear to the Committee that I do not wish to support in any way the modification under the circumstances laid out in the clause. However, the part of the clause that will allow an affordable housing planning obligation under section 106 to be removed altogether is particularly pernicious. The amendment would remove paragraph (c) of clause 5(2), which would be really important because it would prevent all the affordable housing being removed from a particular development. That is wrong for two very big reasons, which do not necessarily pertain to simply modifying the obligation under section 106.

First is a subject that I suspect the Committee will talk about again: it would lead to less mix in our communities. To date, the Minister has not engaged in that topic or given a rationale as to why he is bringing forward a measure that will lead to less mix and balance in our communities. Secondly, it reduces the land available for affordable housing. I will come back to the subject, because it is the basis of another amendment in the group, but I am flagging it up here because it is relevant.

A number of organisations, most notably the Town and Country Planning Association, the Campaign to Protect Rural England and Friends of the Earth, note the need for communities to be socially cohesive—the evidence has been provided to the Minister and all members of the Committee. That is why we want, in a sense, to limit the ability of developers to negotiate away all their affordable housing obligations under section 106. We simply do not agree that that should be possible, and we would certainly want to see how any test for viability would allow that to happen.

Moving on to amendment 68, almost everyone who has given evidence to the Committee has pointed to the fact that the Government have provided no evidence whatsoever to confirm that developments are being held up by the application of section 106 agreements for affordable housing. The House of Commons briefing makes it clear that the National Housing Federation and others agree that

"there are usually other, more significant issues holding up development. In many cases, constraints and costs of development finance and mortgage availability, as well as the sales risk, are more fundamental stumbling blocks."

We want to know why those wider issues are not being addressed. Much has been said about viability, and the lack of a definition and clear criteria. Clearly, we cannot have section 106 agreements for affordable housing negotiated out of existence without any evidence that it is their inclusion in the development approval that is holding up house building.

Ian Murray (Edinburgh South) (Lab): My hon. Friend is getting to the crux of the problem with the clause. A development could be unviable and renegotiation could happen on a section 106 agreement for affordable housing and, although it might not be the affordable housing part that makes the development unviable, the legislation restricts the conversation to that aspect. We could, therefore, lose affordable housing for the sake of a traffic management plan that might be holding up the viability of a scheme.

Roberta Blackman-Woods: My hon. Friend makes an excellent point. What we heard in a lot of the evidence to the Committee was that it is often highways issues that are responsible for holding up development. We are not sure how viability will be assessed, but we certainly do not believe that the Government have made their case that section 106 agreements for affordable housing are the main factor stalling sites.

The amendment sensibly places a requirement on the local authority to establish that it is the section 106 agreement for affordable housing that makes the development unviable. Only if that is shown to be the case should the developer be able to ask for a renegotiation. I appreciate that the Minister does not always follow my common-sense approach, but it seems to be basic common sense not to ask for renegotiation of section 106 unless it has been established that that is the primary cause of the hold-up with a development site. At the moment, we do not know that, and I am not sure whether local authorities have even been asked to provide such information. Perhaps the Minister would like to respond to that when he gets to his feet.

The amendment would allow for the identification of other types of obligation, such as highways contributions, to be put forward to the local authority, under existing arrangements, as part of a renegotiation of section 106. Developers are already able to ask the local authority for a renegotiation of section 106 agreements, so we simply cannot understand why the Government would

[Roberta Blackman-Woods]

not want to accept that absolutely basic common-sense amendment. It follows what already happens in practice and would prevent a renegotiation of section 106 agreements that would ultimately lead to a site being brought forward for development in any case.

Moving on to amendment 69, during Parliament's discussions on the national planning policy framework, the Government were at significant pains and went to significant effort to highlight their localism credentials. Those credentials were somewhat tarnished some months later by the existence of the Bill and other measures brought forward by the Government to take powers away from local government and local communities.

2.30 pm

Central to the Government's claim on localism, however, was the primacy given in planning to the local plan. It is strange, then, that no mention is made of the importance of adhering to the local plan requirements in clause 5. Amendment 69 would require that a local authority can agree to a renegotiation of section 106 agreements for affordable housing only where doing so would not materially conflict with the local plan provisions. That could mean sites that have been identified as being available for affordable houses, the number of affordable houses needed in the area, or the fact that consideration should be given to other forms of development that could deliver for the local community before section 106 agreements for the removal of affordable housing are made. The rationale for the amendment is that economic issues should not be the only test of viability. Some consideration needs to be given to development plan policy, such as the need for a range of homes at a range of prices, so that the entire local community may access adequate housing. As my right hon. Friend the Member for Greenwich and Woolwich said earlier, rural exception sites have been identified to do just that, and we are concerned, as the Committee heard, that enough consideration may not have been given to the importance of such sites in particular communities.

Consideration should also be given to whether an alternative scheme could be brought forward, rather than section 106 agreements being renegotiated. We see that as happening in clearly defined circumstances. For example, a redesign of a scheme to include more housing could mean that it could go ahead, rather than having to completely get rid of all the affordable housing that had been negotiated with the developer under section 106 agreements. Why has the Minister homed in on one particular measure for testing viability and why is he not considering any other measure, particularly any measure that could continue to deliver affordable housing for the local community? I do not think that that case has been made so far.

I accept that amendment 71 allows for a set of economic circumstances that the Government seem not to consider at all. That is deeply worrying as all the panic measures introduced since 6 September are supposed to bring forward growth. The Government clearly do not have much faith in a positive outcome to their approach, because the whole Bill allows only for a situation where land values are falling. One can only assume that the Government expect us to be in a dire economic situation for some time to come. Otherwise, presuming that the Government expect this legislation to be in place for some time, I would have thought that they might have considered a scenario where—although it is likely to be under another Government—growth gets back into the economy.

The amendment would allow for a situation in which a section 106 agreement for affordable housing has been negotiated downwards or out of existence, but the site has stalled after one year. In the meantime, if the land value has risen, the local authority could determine a new requirement, modify the requirement or agree to review it after a given period. It would mean that where developers benefit from a renegotiation downwards of a section 106 agreement for affordable housing, they should move to develop as soon as possible. Otherwise, they might face the possibility that a higher contribution would be applied sometime in future if land values increase and they have not yet developed the site.

The amendment would not only assist developers in bringing forward timely developments; it would mean that should there be an uplift in land values, the community would benefit too, which is exactly what section 106 agreements are supposed to achieve. Somewhere along the line in the legislation, we forgot that. They are meant to negate some of the downsides of particular developments for the community and allow the community to share in a portion of the uplift in land values. We heard lots of evidence making that case in the early stages of the Committee, but I have yet to hear from the Minister what he thinks the purpose of section 106 agreements should be and why he considers it necessary to alter the existing legislation as he proposes. The amendment also introduces a test of reasonableness, from which numerous clauses would benefit.

On amendment 72, the National Organisation of Residents Associations, in its evidence to the Committee, asked what the definition of non-viability is, saying:

"Who decides what is an appropriate profit margin?"

NORA speaks for all Opposition Members. It points, rightly, to the lack of buyers as the problem in some areas, and castigates the Government for the lack of an evidence base. That seems to be particularly important. The whole premise of the clause is that developers cannot develop sites because they are not viable due to the application of section 106 agreements on affordable housing. We have no evidence that that is actually the case; interestingly, neither have the Government presented evidence about what profits developers are making in the current environment.

We know that Taylor Wimpey profits have increased by £33.7 million over the past year. I accept that that might be an exception, but surely it is up to the Government to demonstrate that it is and, at least, to show the Committee evidence of the number of developers who might have to stop or stall developments because they do not have the money to proceed. I notice that the hon. Gentleman opposite is shaking his head. I do not know whether it is because he does not agree with what I am asking for or because he does not think that the Committee should have such evidence to assist our deliberations.

Dr Thérèse Coffey (Suffolk Coastal) (Con): During our public evidence sessions, I gave the example of an NHS trust absolutely refusing to include any affordable

housing in a development. There are people out there. It is not necessarily just the developers; it is also the clients.

Roberta Blackman-Woods: My point was not that sites are not stalled—we all know of the existence of stalled sites—but that the Government have not to date provided evidence that those sites stalled because of the existence of section 106 agreements for affordable housing only. That is the measure that is before us today.

Dr Coffey: That is one example.

Roberta Blackman-Woods: One example is not evidence. We are trying to assist the Committee's deliberations by getting a sensible evidence base to underpin the legislation —if one exists, which I doubt very much.

Secondly, it would be helpful for the Committee to have some information about the number of developers whose profits have been slashed to the extent that they cannot undertake any developments because of the existence of section 106 agreements on affordable housing. That is important. The clause will have a huge impact on how developments are carried out in this country and we should not make decisions in Parliament without a proper evidence base.

Amendment 72 has much in common with amendment 7, which was tabled by my right hon. Friend the Member for Greenwich and Woolwich. It proposes that the Secretary of State sets out in regulations that have been consulted on the criteria for assessing economic viability. The determination of economic viability and the ability of developers to use non-viability as a means of renegotiating section 106 agreements for affordable housing is central to the clause, yet at no stage has the Secretary of State thought it necessary or reasonable to set out clearly for members of the Committee, or for relevant organisations or agencies, how viability is to be determined. That is simply not acceptable. There is certainly a need for greater transparency on this matter.

Many organisations that have given evidence to the Committee have pointed to the lack of evidence about non-viability, but a number have said that we do not have before us the criteria to determine the whole approach. That is somewhat strange, especially as it would appear from evidence given to the Committee that the Royal Institute of Chartered Surveyors has already produced some of that guidance.

Interestingly, in its evidence to the Committee on clause 5, the RICS said:

"Those renegotiating S106 agreements must have the right skills to assess viability."

I am slightly nervous about raising this issue, because I suspect that over lunchtime a new unit was probably created in the Department for Communities and Local Government precisely to assess viability. I look forward to hearing from the Minister how many members of staff will be allocated to it, how much they will be paid, what training they will be given and so on, but perhaps he will take on board the point raised by the RICS. How will he ensure that people have the right skills to assess viability?

The RICS also said:

"Access to an independent, impartial adviser during the negotiation process would efficiently deliver robust renegotiations."

It suggests that there are expert advisers already available in the planning service established by the RICS, Royal Town Planning Institute and the Planning Officers Society and that that could be developed as an alternative to setting up a new unit in the Department. Critically, that expertise would be accessible to all parties. It would not simply be the case that a unit would be set up in the DCLG that would give advice to one party; it would be an independent collection of professionals who would be able to give expertise to all parties involved.

2.45 pm

The RICS says that there should be

"clear guidance which has broad industry agreement".

It says that that is essential if there is to be a correct and robust assessment of viability, and it makes the very helpful point that, without that guidance, the Government risk

"introducing greater uncertainty and an even more cautious approach from developers concerned about appeals."

Interestingly, in its submission, the RICS points out that it

"has produced Financial Viability in Planning Guidance, consulting widely with the public and private sectors, to provide an objective test of the ability of development to meet its costs including the cost of planning obligations",

and is asking for Government endorsement of that guidance. Even if the Government are not prepared to endorse that particular guidance, they might at least tell us what they think about it. That would be a step forward for the Committee, because at this point in time we have absolutely no idea whatever about how the Government, or anybody else, are going to provide assistance relating to this clause, or how they are going to measure viability.

Finally, I turn to amendment 76, which would ensure that where a local authority has determined that no negotiation is desirable and the developer has appealed to the Secretary of State, the Secretary of State cannot decide to revoke or discharge an obligation entirely; the amendment therefore follows on from amendment 67. Basically, our argument is that although it might be possible for the Secretary of State in that set of circumstances to ask for a renegotiation of the planning obligation, he should not be able to suggest that the obligation is disposed of entirely. Our intention is to highlight the need for thorough negotiation and the importance of the delivery of some affordable housing. Furthermore, removing the possibility that the requirement will be removed would make it likely that fewer developments would be stalled in the hope that appeals could be made to the Secretary of State for a complete withdrawal of obligations. We hope that the amendment would lead to more reasonable and sensible negotiations between the local authority and the developer, as well as keeping in mind the need to deliver affordable housing on sites under consideration.

Mr Raynsford: I tabled amendments 7 and 9, which deal with different issues, including one that is very close to an issue that my hon. Friend outlined, so I will not spend very much time on it. I want to devote rather more time to amendment 9, which covers an entirely new area that has not been addressed.

[Mr Raynsford]

Amendment 7 would require a proper definition of viability. My hon. Friend has made the case for that very strongly. The mechanism proposed in my amendment is very similar to that proposed in hers, as we both believe that there is a need for a proper process, to consult relevant parties, then approve a definition of viability that would have the backing of a statutory instrument; that would seem a sensible way of achieving some kind of consistency about the approach towards definitions of viability. My hon. Friend has spelt out the reasons why that is important; I would like to add one additional factor.

I do not believe the Bill does very much about growth. Most Opposition Members believe that the Bill is a fig leaf to cover the Government's embarrassment about the lack of growth in the economy. Most of the measures proposed will not actually stimulate growth. However, there is one area where there will be growth if the clause is introduced without the addition of amendments 7 and 72. There will be growth among valuers.

There will be a gravy train for valuers. First, developers will say, "We want to demonstrate the section 106 agreement that we previously entered into is not viable. Will you please give us some consultancy on that subject and give us a case that we can mount to get the section 106 agreement revised?" The local authority will need similar advice, so it will go to another firm of valuers and say, "Please give us advice to prove that the section 106 agreement is reasonable and viable, and should not be revised." Two groups of valuers will beaver away to produce evidence to support their respective clients. If, after all that, the local authority declines to revise the section 106 agreement, the developer may use the appeal procedure and go to the Planning Inspectorate. Bingo, there will be a third valuer involved because the Planning Inspectorate does not have the expertise to carry out assessments of viability. It too will be looking for valuation advice.

If I were a Government Member, I would be buying shares in valuers. That is the one group of people who can look at the Bill and say, "This is unqualified good news for us. There is going to be more business." If you work for Savills, Jones Lang LaSalle, Cluttons or whoever, this is a wonderful piece of legislation. However, in the public interest, I do not agree with it at all. All that it will create is a lot of speculation—people arguing the toss with one another. It will not help to get developments under way. It is entirely false growth, not growth that will bring real benefits to the British economy.

Ian Murray: Has my right hon. Friend thought about circumstances in which developers who are sitting on patches of land, or have developments that have been marginal in the past, might actually promote schemes that are marginal or unviable from the start, on the basis that they will be able to promote them as unviable when the permission is granted and then get the exemption from affordable housing under the Bill?

Mr Raynsford: My hon. Friend raises another rather interesting and troubling scenario. When this process began and the Government first announced their intention to look at this issue, the assumption was that the measure would deal only with projects that had stalled as a result of the recession, and where the revision of a section 106 agreement made perhaps two or three years ago was a possible way to unblock the jam. Now, we are clearly in territory where this could become an ongoing part of the scenario. Without a sunset clause—I do not see any provision to bring the clause to an end after one or two years, or in changed economic circumstances—there is exactly the risk that my hon. Friend highlighted, of this being used cynically to secure developments without affordable housing that could not otherwise be approved.

Amendment 9 raises a different issue, and focuses on the provisions of subsection (6), which says that when a planning obligation is modified, a determination may not have the effect of making the obligation more onerous than it was originally. It might be a sensible concept that the outcome should not impose a more onerous obligation, but unfortunately, as always with legislation, there can be difficult problems of interpretation. In the evidence sessions, we heard about a couple of instances where problems could arise.

One of the ways in which local authorities are renegotiating section 106 obligations—the LGA has given us strong evidence that many of them are doing this—is by changing the phasing of the payment of the obligation, possibly by reducing the initial payments and allowing for greater payments at a later phase when the market has recovered. Another option is to commute an element of what previously would have been a payment as part of a section 106 obligation into a profit share between the local authority and the developer, assuming that market circumstances improve in due course and the scheme becomes more profitable than envisaged when the section 106 obligation was negotiated or revised.

In both those cases—a change to the timing, or a change involving a reduction in the upfront contribution, but with a profit share envisaged at a future date—clever valuers could demonstrate that this will be more onerous than the original deal. A discounted cash flow could prove more or less anything if it is prepared by clever experts in the field who attach particular estimates to the likely inflation over the period or other variables. There is a risk that a perfectly sensible deal to make a scheme that is not currently viable but could be made viable, perhaps by a change of timing of contributions or by the introduction of a profit share in place of part of the upfront contribution originally envisaged, could result in the scheme falling foul of subsection (6) as currently worded.

The purpose of amendment 9 is to say that this will not prevent the planning obligation from being modified so as to change the timing of payments. That is eminently sensible. I hope that the Minister recognises that this is not a wrecking amendment. It is there to avoid a potential hole in the architecture of the scheme that could prevent a sensible conclusion to the revision of section 106 agreements. I hope that the Minister will accept the amendment. If he thinks the wording is not right and that it should be taken away and redone, I would be perfectly happy to withdraw it to enable that to happen. However, the principle of the amendment that there ought to be clarification so that a change in timing and substitution of a profit share for an upfront payment should not fall foul in any way of the provisions of subsection (6) makes sense. I hope the Minister will agree to amend the Bill accordingly.

Nick Boles: We are presented with a veritable blizzard of amendments and the Government are about to present the Committee with a blizzard of our own. The hon. Lady has made sure-footed progress through the blizzard, so I hope she will understand if I follow in her footsteps. She started with amendment 67 and I should just like to respond to the point that she made on that. I completely understand the concern. Whatever the Opposition might sometimes seem to believe, we genuinely believe in affordable housing and affordable housing on site, so not just delivered elsewhere through grant or through financial contributions. One reason why we all want to retain the rather clumsy 106 system is that there does not seem to be another way of achieving mixed communities whereby new developments of private housing also include affordable housing. We are genuinely trying to make this work.

I can completely understand, given the normal meaning of the English language, why the hon. Lady is worried that a suggestion that an affordable housing requirement could be removed seems to imply that it could be lost altogether and in perpetuity. We have drafted the Bill in such a way as to prevent that from happening. I hope that the hon. Lady is aware that, in a later group of amendments, the Government propose that, three years after a new agreement is applied, if the development has not been fully built, we will revert to the old section 106 agreement, which was originally negotiated and prevailed before this process got under way, with its more onerous affordable housing provisions. If the developer has not taken advantage of the new agreement fully to build the development, the developer will be faced with a reversion to the old affordable housing agreement.

3 pm

Andrew Stunell (Hazel Grove) (LD): Will my hon. Friend give way?

Nick Boles: My right hon. Friend probably understands the proposal better than I.

Andrew Stunell: I would not say such a thing, but does the Minister agree that that is a complete rebuttal of the view of the right hon. Member for Greenwich and Woolwich that there is no sunset clause? In fact, it is more of a dawn clause.

Nick Boles: The right hon. Gentleman is absolutely right and he anticipates a response that I was going to give. There is very much a sunset on this measure, which is that if developers do not get a move on, after three years they will be dealing with the old agreement that was originally negotiated, and I thank the right hon. Gentleman for his point.

On that point, if an affordable housing obligation is discharged, it is impossible to reinstate it at the end of that three-year period. That is why we are providing for the Planning Inspectorate to be able to determine that a requirement should be temporarily removed from a planning obligation, because that would enable it to reapply that original affordable housing component at the end of the three years. What sounds very final—I completely understand why it sounds final—is actually therefore the way to ensure that we revert to the original commitment on affordable housing at the end of the three years.

Mr Raynsford: May I draw attention to subsection (2)(c) of proposed new section 106BA of the Town and Country Planning Act 1990, as introduced in clause 5? It makes no mention of the obligation or requirement being temporarily removed. It states,

"for the requirement to be removed from the planning obligation".

If the Minister can confirm that he would be happy to add the world "temporarily", I think that would give a great deal more comfort to the Opposition.

Nick Boles: In spirit, I would be very happy, because that is what I believe we are doing. I would obviously need to consult with lawyers about exactly how to arrive at that. I would not want to advise that we will insert a word, because it may have completely the contrary effect to the one that I am trying to achieve. However, the intention is that such a removal would cease at the end of three years if the development had not been fully built out.

Roberta Blackman-Woods: Does the Minister agree that if the development had been completely built within the three-year period, all of the affordable housing requirement would be lost?

Nick Boles: I am certainly not expecting that the whole of the affordable housing agreement will be lost as a matter of generality. It may be that there are certain extreme cases where the original affordable housing agreement was pretty small but nevertheless is threatening the viability of the site because of other complications in that particular development. Therefore, the new deal that is reached may be one that does not include affordable housing. It is then built out and, at the end of three years, that affordable housing agreement would no longer be returned to. However, that would be very much the exception. The normality will be that there will be a revision to the affordable housing provision and that that will pertain for three years. If the developer has not managed to build it out, it will revert to the original agreement.

On temporary removal versus permanent removal, I am advised that the local planning authority, which in most cases is just reaching an agreement, can permanently remove the requirement. The local planning authority may choose to remove voluntarily the affordable housing component as part of renegotiation. That can be permanent. It is the PINS decisions on appeal that will be subject to this three-year limit. If PINS gets involved because the developer has not been satisfied by the local authority's proposal, the PINS-imposed agreement will be subject to a three-year limit, which will revert once it expires. I hope that that answers the question. If it does not, I shall be happy to come back to the subject.

Now I want to follow in the footsteps of the hon. Member for City of Durham and go to amendment 68, which is a curious amendment. The hon. Lady is effectively asking for a process that is gone through to demonstrate that it is the affordable housing that is preventing a scheme from being viable, when the whole point of the clause is to get the local authority to go through a process of assessing whether the developer has a good case—good evidence—that it is the affordable housing that is making the scheme unviable. If the local authority is not persuaded and the developer nevertheless insists that that is the case, PINS must go through that process.

[Nick Boles]

So she is effectively asking us to put in place a process in order to start down what is effectively the same process. Of course, her process might then lead to an appeal process, at which point the developer would appeal to PINS and say, "Yes, it was affordable housing, wasn't it?" We would be effectively doubling up on the entire provision by accepting the amendment that she proposes.

I hope to be able to persuade the hon. Lady that the whole point of the exercise is that the developer will need to demonstrate to the local authority that the viability is threatened by the affordable housing component. If they cannot reach agreement or the developer is not satisfied with the local authority's determination, they will have to demonstrate to PINS that it is the affordable housing component that is the problem. If they cannot, frankly they are going through an expensive and laborious process for nothing, because neither the authority nor PINS will vary the affordable housing component if the threat to viability is not demonstrated. The clause as drafted provides the assurance that only if affordable housing is the problem will there be any alteration in the requirement.

Paul Blomfield (Sheffield Central) (Lab): Does the Minister recognise that the amendment reflects a concern that was widely expressed in the evidence sessions? Indeed, strong concern was expressed by the Conservative-led Local Government Association that there is widespread uncertainty as to why the Government have chosen specifically to isolate affordable housing from within the range of section 106 issues. Perhaps he will share with us, because he has failed to do so up until now, the reasoning for isolating such housing. If he himself has no evidence, perhaps he will share the evidence given to him by developers that that uniquely is the problem.

Nick Boles: I am happy to do that. I had been expecting—I believe it is the case—that the hon. Member for City of Durham would like to have a clause stand part debate, so we will probably get to the arguments about the broad justifications for the clause then. Suffice it to say that the way in which section 106 works is this: in general, section 106, as the hon. Lady put it very well, is to compensate local communities for the impact of a development on infrastructure. It might be that a primary school will have its rolls overloaded or that a road will not be able to cope with the additional traffic that will be put on it, and that section 106 is therefore—in generality—in place to ensure that various developments can take place or financial contributions are made to alleviate the impact on the broader community of a particular development.

The one other element that we have introduced—I called it perhaps clumsy, even though we all support it—is the idea of affordable housing. There is no necessary, logical impact on the community. It does not follow that when someone builds a development, it therefore, as a matter of logical conclusion, has a greater need for affordable housing than it had previously. We all respect and believe that communities have a need for affordable housing, and one of the best ways to provide and ensure that we have mixed communities, not ghettos, is to do so through section 106 agreements on sites. It is, however, in a different category because it is a commitment—an obligation—that we ask developers to make that is not directly, logically linked to the impact of the development that they propose. Therefore, it is perhaps easier to separate that out.

This is a purely financial commitment. It may be done through land, but its impact on the developer is financial. The road may be needed whatever happens if that development is built, and the affordable housing may be strongly desirable—we may all wish to see it—but not absolutely necessary to alleviate the impact of that particular development. Hence, it is logical to treat those cases slightly differently when trying to unblock stalled sites.

John Howell (Henley) (Con): As I understand it, the viability of section 106 agreements is currently being discussed and renegotiated by individual councils. These agreements are being renegotiated without any of the fuss and palaver that the Opposition described, and they are being dealt with in a simple, common-sense way.

Hon. Members: So why legislate?

Nick Boles: I am glad to hear that the hon. Member for Rochdale agrees. The whole point is that it is being done. He has just come back from the celebration of the delightful Lancashire food—I am glad to see him back and regret not having been able to join him there—so I am seized by the desire to mention Rochdale again. In Rochdale, Greenwich and other local authorities that hon. Members represent, negotiations are indeed taking place. We heard him say also that that is not always popular with some local residents, and I hope that he will introduce me to some of his constituents who feel strongly about a particular case. As my hon. Friend the Member for Henley said, many local authorities are doing this voluntarily, but the entire purpose of the clause is to persuade those few who stubbornly insist on a target in a document rather than being pragmatic and getting some houses built, including some affordable houses. That is all we are trying to achieve here and, frankly, if this clause works, nobody will end up having an affordable housing agreement renegotiated or redesigned by the Department.

Simon Danczuk (Rochdale) (Lab): *rose—*

The Chair: Order. I remind the hon. Gentleman that neither the amendment nor the clause is specific to Lancashire.

Simon Danczuk: I am grateful for the advice, Mr Howarth. I just want to correct the record. I have come from the Association of Convenience Stores annual conference, where I was discussing the postponement of the revaluation of business rates. It is appalled by that.

Nick Boles: I am happy to be corrected by the hon. Gentleman.

Ian Murray: The Minister almost seems to be arguing against his own point, because if a scheme is unviable, then it is unviable. Therefore, if a developer goes to the local authority or, in this particular instance, to the

Secretary of State and says that a scheme is unviable but they would like to get it unblocked, the Minister is saying that that would be rejected because it is unviable for reasons other than affordable housing. In that case, why are not all the section 106 specifications in this clause? If the key for the Government is to unlock stalled sites, and if it is other things that are causing the stalling of those sites, why does the clause not include the whole list of section 106 agreement specifications?

Nick Boles: As the hon. Gentleman will be aware, we are also, separately, looking at provisions for all the section 106 obligations for applications that were concluded before a certain date in 2010. We accept that there is a case—particularly, as the hon. Gentleman said, in the recession—for looking at the whole agreement. Nevertheless, there is a conceptual distinction; section 106 obligations that relate to alleviations of specific and direct impacts of a development and are hence inescapable—such as those where primary schools or a road that connects the development to a community must be built—are in a different category from a commitment to affordable housing, whether though land or financial contribution. We all support and desire that, and want to see that maintained, but it is not essential to enable the development to happen. Hence, I think there is logic to consider them in a slightly different category.

Paul Blomfield: I want to press this point, because although it is enjoyable to watch the Minister dance on the head of a pin describing differences, and I appreciate the differences he describes, the Bill is supposed to be about promoting growth. He has failed to address the point made by the Conservative-led Local Government Association that there is no evidence that it is the affordable housing element of section 106 that is stalling growth. Will he address that now?

3.15 pm

Nick Boles: I do not want to go down a wormhole. As the hon. Member for City of Durham proved this morning, whenever I present some evidence she says it is an anecdote or just a quote, whereas when she presents it, it is, of course, copper-bottomed evidence. I have in front of me some examples, given to us by developers, of schemes that were stalled because local authorities refused to renegotiate. I have the LGA's own surveys on which authorities have negotiated, which percentage have not, and which percentage said that they would absolutely refuse to.

Of course, I myself, in my job, have not had the chance to go out and list every single scheme that has stalled because of refusal to negotiate. All I would say is that, if the hon. Member for Sheffield Central is right and there is not in fact a single site that is stalled because of the refusal of a local authority to negotiate sensibly on the section 106 agreement and the affordable element therein, there is nothing to worry about. This will have exercised you and me, and taken up some of our time, but we are all paid for by the taxpayer to do this work, and it is not unreasonable that we should try to.

The Chair: Order. I can assure the Minister that it will not exercise me.

Nick Boles: I am sorry, Mr Chairman. I certainly do not want to detain you on a fruitless quest. All I am trying to argue is that, should the hon. Member for Sheffield Central be right, and I do not think he is, there will be no adverse consequences from the clause not being used. We believe very firmly that there are cases where local authorities are holding back the building of houses that actual people could live in because of a stubborn insistence on numbers in documents, targets and aspirations. We believe that very firmly, which is why we are bringing in this clause—we want to encourage them to be a bit more pragmatic.

If I may move on to—I cannot quite believe it—the hon. Lady's third footstep in this journey, amendment 69, which suggests that we should bring into place a broader consideration of the strategic policies of the development plan. It is a troubling amendment, because I believe that it would actually make the problem worse, not better. As we have all agreed, many local authorities are currently sensibly renegotiating, where necessary, in order to unblock stalled sites. Were we to accept the amendment, we would actually make it harder for local authorities to do that, because they would have to go through some ghastly box-ticking exercise whereby they demonstrated that in conducting the negotiation they had given due consideration to every single one of their policies. Of course, we should trust that local authorities that are willing to enter into negotiations are trying to achieve all the objectives they want to achieve, and if they have to take a shortcut to get stuff working, I do not want to make their lives harder. I hope that that will persuade the hon. Lady that amendment 69 is not going to help her achieve her goals.

Similarly, on amendment 71, we share the strong desire that these measures are understood by the development community as a time-limited source of alleviation; if developers do not take advantage of them in a reasonable time frame, the agreement that they originally reached will be restored. Hence we have the proposal for a reversion to the old affordable housing agreement after three years. However, one year is simply not realistic. All that that would be likely to produce is another merry-go-round of the bureaucratic process. A developer, having taken advantage of a one-year agreement—if it thought it was worth even trying for one in the first place—would run into the buffers, because a year is not a very long time in either politics or development. It would then have to go back to the local authority and back to PINS to make another agreement. I hope that we can persuade the hon. Lady that three years is a reasonable period, given how quickly developers, particularly on substantial sites, can move.

The hon. Lady's next step was amendment 72, regarding viability assessments. If I may, I would like to address amendment 7 also—as the Opposition did—tabled by the right hon. Member for Greenwich and Woolwich. I do not know what position the right hon. Gentleman held in the Government when they legislated for something that we support: the community infrastructure levy. However, he and the hon. Lady will know that the CIL depends, just as much as the clause does, on the proper assessment by local authorities and, in turn, the Planning Inspectorate, of the viability of sites. The CIL is a tax, and if a tax is set too high, it could choke off all development.

[Nick Boles]

Affordable housing contributions under section 106 are another form of tax. While benign and positive, they are nevertheless a tax. Viability has to be assessed in the same way. When the legislation for CILs was tabled, no doubt supported by Opposition Members on the Committee who were in the House at the time, it made provision for guidance to clarify exactly how viability should be assessed. We are finding that it is important to have the flexibility of it being guidance, not regulations or anything legislative, because the first few authorities that had been grappling with the matter were perhaps not giving proper weight to some of the concerns, and the development community and the local authorities were a bit concerned. We are currently going through a process to try to refine the guidance to ensure that local authorities take into account the right things. Those things may change over time. Opposition Members have mentioned the change in the banking industry, the lack of finance available and the difference in the terms that sources of finance are willing to offer. That was not true four years ago; it is true now; and it might not be true in four years' time.

Of course it is important that local authorities understand how viability will be measured and what criteria will be used. The guidance will be published in due course. Requiring regulations, which would need to be changed through a parliamentary process, would be to do something that the Opposition themselves did not do for their own proposals on the CIL.

Mr Raynsford: I assure the Minister that I was not a Minister when the community infrastructure levy was introduced. I had argued against its predecessor proposal, the planning gain supplement, which was suggested by the Government and then withdrawn in favour of the CIL, which seemed to have a better structure. However, there is a fundamental difference between that and the current proposal.

The CIL was a tariff to be set by the local authority to cover all development circumstances. The proposal in the clause is concerned with the assessment of viability on individual sites. There is a great deal more at stake, including the risk that I highlighted: the proliferation of consultants and experts charging fees to advise on interpretations of viability. That would not happen with the CIL, where the developer would have the option simply to pay or not pay the tariff, but could not negotiate on whether it made an individual site viable.

The Chair: Order. The right hon. Gentleman has a habit of skilfully turning an intervention into a short speech. It is a habit that I have begun to notice is being picked up by other members of the Committee. I have tolerated the problem until now, but I will be watching with an eagle-like glare as to whether that tendency continues.

Nick Boles: I must say that I am rather grateful to the right hon. Gentleman for that trick, but I entirely accept the Chair's ruling; it has nothing to do me.

The right hon. Gentleman has made the argument brilliantly against himself. The fact that the viability that applies to the community infrastructure levy affects all potential and future developments in an area surely means that it was even more important that the viability criteria were set out clearly. If, as the Opposition are arguing, that means that it should have been in regulations, then it should have been in regulations. With the proposed measure, which will hopefully not be in place for long if the recession ends as quickly, as we all hope it will, and which is specifically related to sites, surely the argument is that, if the CIL viability test was dealt with appropriately under guidance, this measure can be dealt with appropriately under guidance, too.

I want to reassure members of the Committee that the guidance is being drafted. We are consulting a range of professional bodies, including no doubt some of the valuers whom the right hon. Gentleman portrays as rubbing their hands in glee about the technical content that will be published when Bill is enacted. There will, of course, be an opportunity for people to comment on it and, as is happening with the CIL guidance, to suggest if some part of it were not accurate, but I resist including such a process in regulations.

I come finally to amendment 9. When the right hon. Gentleman first raised the issue at our evidence session, I said that I understood that we would not want a clause that prevented some mutually beneficial moving around of payments in order to make the scheme more viable and perhaps unlock the same level of commitment, but at a later date, which would therefore be less onerous to the developer. Having looked into the matter, it is clear that the concept of onerousness will not prevent that from happening.

As the right hon. Gentleman said, to do a net present value of the discounted cash flow is relatively straightforward. Lots of arguments can be made about discount rates and so on, nevertheless that is exactly what PINS, if necessary, or the local authority, if not necessary, will be doing when looking at the viability issue. They will know that one way in which to make the year one contribution easier to bear will be to reduce it, and that another way will be to delay it. That flexibility is contained entirely within the concept of onerousness. The judgment will simply be that, in totality with all of the relevant discount rates attached, over which no doubt there will be debate in the process, the entire thing should not be more onerous. I am persuaded, and I hope that we will find a way to persuade the right hon. Gentleman, that the flexibility of the timing of commitments that he seeks is possible under the Bill, as drafted. It might not be possible for me to persuade him of that here and now but, given that we are meeting on another subject, perhaps we can explain it then to his satisfaction.

I, too, want to incorporate maximum flexibility, but he will understand that the development community and, indeed, the social landlords who were parts of the agreements will want to know that the agreement can move only in one direction: either stay the same or become less onerous rather than possibly become more onerous. As the right hon. Gentleman knows, on the second application, there is the explicit possibility that it might become more onerous, given that we want to use that as an incentive for the developers not to return and have a second bite at the cherry.

Roberta Blackman-Woods: The last time I checked our roles, the Minister introduced provisions and had to defend them, and it was my role to scrutinise them and ask questions about them. If he wants to change roles

and change the Government, we shall happily oblige. I will take away what the hon. Gentleman said about time limits and have another look at them to see whether our proposal is reasonable. I request that the guidance on viability is brought forward sooner rather than later so it can inform our deliberations because that would be helpful. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Order. I am suspending the sitting until 3.55 pm to allow members of the Committee to take part in the proceedings of the Chamber. The sitting will resume at 3.55 pm.

3.29 pm

Sitting suspended.

3.55 pm

On resuming—

Ian Murray: I beg to move amendment 70, in clause 5, page 6, line 25, at end insert 'or

'(e) request that the requirement is to be met in part, or in full, by central government funding allocated for the delivery of affordable homes'.

Unfortunately, my hon. Friend the Member for City of Durham, as everyone has realised, is still in the Chamber, waiting to speak on a Ways and Means motion, so the Committee has the glamorous assistant instead. Anything that happens to be remotely humorous is my work, and anything that is not is the work of my hon. Friend. Committee members should change all the feminine references to masculine; I have not read through the speech, so if there are any references to somebody wandering down Durham high street to buy a dress, they are certainly not mine. We will see how we get on.

The amendment proposes to include in the Bill a clear mechanism for securing funding for the affordable housing that will be lost as a result of this damaging and ill- thought-through clause. It would include an option for a local authority to request a share of relevant central Government funding as the fifth option facing them when asked to renegotiate an affordable housing requirement under the provisions. Earlier this year, the Government announced £300 million of funding for 15,000 affordable homes. That funding, part of a drastically reduced and overly fragmented pot of money for both affordable housing and housing more generally, may go some way towards reducing the chasm in affordable housing provision that the clause is likely to produce if introduced without amendment. That, however, will be the case only if the funding can be accessed and properly used.

If the amendment is agreed, a local authority would have option of allowing the developer not to meet the affordable housing requirement while still ensuring that affordable housing is delivered. The Government would be well advised to accept the amendment, as it would ensure that both market rate and affordable housing can be delivered without compromise. Given the extent of housing need in the country, at both affordable and market rates, the amendment is key to bringing about the growth that the Bill wants to achieve. Figures from the Department for Communities and Local Government show that the number of households in England is set to rise by almost 5 million, from 22.8 million to 27.5 million over the next two decades, signifying a need for at least 233,000 new homes a year.

Despite that pressing need, the Government continue to depress house building. Under the current Government, only 98,670 homes were started in the 12 months to June 2012, a 10% decrease on the previous 12 months, during which period they still failed to build less than half the number of homes required under their own figures. I am pleased that the Minister recognises their failure in this area, but his policies will not help. Despite the hugely important role that construction will play in our eventual economic recovery, Government funding for new homes has been slashed and spread out over a number of pots. The Get Britain Building fund, the fund for aspiring self-builders, and the fund for local enterprise partnerships, to name but a few of the initiatives that have been announced, have all been set up to unblock housing and economic growth. The lack of funding has been particularly severe for affordable housing.

It will not surprise the Committee to hear that affordable housing has been hit the hardest. After the May 2010 election, the Government cut the budget for new affordable homes by 60%. Labour invested £8.4 billion in the three years between 2008 and 2011, while the Government will invest just about half of that in the four years between 2011 and 2015.

At the same time, funding for existing affordable homes has also fallen. As a result, a staggering 37% of affordable homes do not meet the decent homes standard. At the same time, rents are soaring, hitting a record high of £725 a month over the summer. The new Minister for Housing admits that that problem is due to the fact that

"hundreds of thousands of people"

have

"been unable to buy or move, and that has seen private sector rents climb."

It is probably worth considering the effect on housing benefit, given that private sector rents increased to an average of £725 a month in the summer.

4 pm

It is little wonder then that homelessness is rising. There were 12,860 statutory homelessness acceptances between April and June 2012—a 9% increase compared with the same quarter in 2011. Over the past year, July 2011 to June 2012, there were 51,470 statutory homeless acceptances, and rough sleeping rose by 23% in the past year.

It should not be forgotten that a failure to build affordable housing not only means that we abandon those at the bottom of the pile but it makes life much more difficult for everyone else. We are all familiar with the housing ladder and know that a millionaire cannot sell his mansion unless he has a buyer. That buyer also needs a buyer, all the way down the chain. That is why I do not understand the consistent refusal by the Minister and his Department to consider steps recommended by the Opposition to support first-time buyers by, for example, giving a stamp duty holiday to all first-time buyers buying properties costing less than £250,000.

Unless the Minister wants to suggest that we prop up the housing market by bringing in millionaires from across the world, no doubt attracted by the tax cuts the Government give them, we need to think about the families at the bottom of the ladder, who cannot afford their first home. The clause is yet another blow to those people. When the Government fail to build homes for those families, that destroys the housing market for everyone above those families in the ladder, including those in bigger houses, whom I am sure the Government do not want to forget.

I do not understand why, in dealing with renegotiation, the clause focuses solely on affordable housing requirements. Despite the Minister's valiant attempt to explain that proposal, there are many other aspects that could be taken into account when considering sites made unviable for development. However, someone somewhere in the Government has not forgotten that more affordable housing is necessary and desirable. Piecemeal funding announcements keep coming through Government initiatives.

On 6 September, the Prime Minister announced £300 million of capital funding and an infrastructure guarantee to build 15,000 new affordable homes and bring 5,000 homes back into use. In fact, the Government are so keen on that policy that it was re-announced yesterday when bidding for a share of the £300 million opened to people hoping to bring empty homes back into use. However, three months and two identical announcements later, we are still none the wiser as to how this £300 million will be used to deliver affordable homes. As we all agree, we want growth and we want it as soon as possible. It seems shrewd to include that funding in the Bill and enable local authorities to bid for a share of the pot, where the affordable housing requirement has stalled development or made it unviable.

The amendment would allow local authorities that are forced to scale down or remove affordable housing requirements to ask the Government, through the provision of that pot, to build the housing with the money that was put aside expressly for that purpose. If the Minister does not accept the amendment, I hope that he will at least set out how that funding is going to be used to deliver the affordable homes that the Government have promised. We need certainty and action on this issue, not more dither and delay. The sooner building gets under way, the sooner we can begin to get millions of desperate families off housing waiting lists and into safe, decent homes.

Nick Boles: I welcome the hon. Gentleman to his Front-Bench position. Even if he did not draft his speech, he delivered it with great vigour and force. I was slightly amused by his criticism of the Government for reannouncing the £300 million subsidy for new, affordable homes. I accept the criticism that we do not yet approach the consummate skill of the previous Government, who did not announce things just twice, but 23 times, and each time managed to get a different headline out of it. I accept that, compared with the previous Administration, we are woefully inadequate as communication managers.

Rather than enter into the broader discussion that we will have in the stand part debate, I will address the amendment. I have a lot of sympathy for the Opposition's underlying concern, but not for the method proposed in the amendment. I have a lot of sympathy for the suggestion that, because the Government introduced the Bill in a package with a further investment of £300 million in subsidy and £10 billion of guarantees, it is entirely understandable that people and communities might seek to replace some of the affordable homes that might not remain within a section 106 agreement as a result of the Bill. They might seek to secure those affordable homes through another route, such as this funding.

The difficulty we have is simply this: it is not local authorities or local authority areas that apply for this subsidy funding and for a share of the £300 million or the £10 billion of guarantee; it is the registered social landlords themselves. Of course, most landlords have schemes, and some are very regionally focused, but many are across a wide area. It would therefore be contrary to the approach we are taking to somehow channel a portion of the £300 million to those local authority areas and specific sites affected by the Bill.

I am sure that the hon. Gentleman and other hon. Members will understand that the most important thing in these straitened times, given that we have inherited a situation in which there simply is not the money there once was to invest in affordable housing, is to use what money we do have as effectively as possible. We might face a situation where one particular scheme had seen the affordable housing element reduced through a renegotiation or through the intervention of the Planning Inspectorate on appeal, but where the affordable housing that had been in the scheme previously had required a lot more subsidy than affordable housing elsewhere in the country. I do not believe that the hon. Gentleman would want the Government to invest the public's money in securing less affordable housing in one place than we could secure somewhere else. That is why we are very much taking the approach that, while we are open to proposals from any social landlord, we nevertheless want to apply a strict value-for-money test in allocating the money.

Ian Murray: I appreciate the Minister's explanation of the distinction between a stalled unviable site and a registered social landlord bidding into the fund, but developments, particularly those on a certain scale, often have a registered social landlord attached, because that is how they deal with designing the scheme or with who will take over the affordable properties when the scheme is concluded. In that case, could the social landlord bid into the fund and say, "Actually, having this pot of money available to us would allow this project to become more viable?"

Nick Boles: If I can come part way towards what the hon. Gentleman is suggesting, it would be absolutely open to any social landlord to tell the Homes and Communities Agency that they wanted to unlock some affordable housing on a site that might otherwise be lost by using a package of subsidies and, potentially, these guarantees. All I am saying is that the decision would nevertheless be taken on the basis of whether that provided the maximum bang for buck. If it did, there would be every willingness to look at the proposals favourably, but we would not want to pre-allocate a portion of the funding for sites that are affected by the clause. On that basis, I hope that the hon. Gentleman will withdraw the amendment.

Ian Murray: I am encouraged that there may be a mechanism to let registered social landlords bid for this £300 million through the Government's desire to build more affordable homes. However, we will have a stand part debate on the more general terms, so, on that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Nick Boles: I beg to move amendment 34, in clause 5, page 6, line 42, at end insert '—(a)'.

The Chair: With this it will be convenient to discuss Government amendments 35 and 46.

Nick Boles: This is an unfamiliar position for me. Normally, I get a little time to work out what on earth we are talking about, as the hon. Member for City of Durham or, on the previous amendment, the hon. Member for Edinburgh South sets out their case. This time, however, I will have to explain the amendments.

Amendments 34, 35 and 46 are intended to provide greater certainty to the House and interested parties on procedural matters and to enable the swift implementation of measures. Amendments 34 and 35 introduce a default period for the determination of applications under the clause. The default period for the relevant authority to make a decision will be 28 days.

Such applications will focus on only one issue: the affordable housing requirement and its economic viability. Of course, the very same authority will have considered that issue previously in reaching the agreement in the first place. There will be no opportunity to review the planning policy context or to assess the costs involved in other aspects of the section 106 agreement. Therefore, a fast-track decision-making process is justified and necessary. To ensure flexibility, there is also a provision to allow for the time period to be increased, by agreement of both parties, as is commonly the case with all sorts of applications on planning matters to local authorities. Amendment 46 makes a necessary consequential amendment.

Amendment 34 agreed to.

Amendment made: 35, in clause 5, page 6, line 43, at end insert ', or

(b) if no period is prescribed under paragraph (a), within the period of 28 days beginning with the day on which the application is received, or such longer period as is agreed in writing between the applicant and the authority.'.—*(Nick Boles.)*

Ian Murray: I beg to move amendment 74, in clause 5, page 6, line 47, at end insert—

'(10A) If, at the end of one year from the date set according to subsection (10) the obligation as modified has not been met, the modification ceases to have effect and the original obligation is reverted to.'.

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

Government amendment 37.

Amendment 73, in clause 5, page 7, line 38, after 'Secretary of State', insert 'subject to published criteria'.

Government amendments 38 to 44.

Amendment 77, in clause 5, page 8, line 18, leave out 'three years' and insert 'one year'.

Government amendments 45, 48 and 49.

Ian Murray: We are cantering through the amendments and frantically finding the pieces of paper that refer to them. Having done so, I find that reading someone else's handwriting is a challenge, but I will try my best.

Amendment 74 would add a subsection to new section 106BA introduced by clause 5, setting a date at which modifications would cease to have effect—after one year—and thereby allowing a degree of flexibility and possibility in relation to a renegotiation of a section 106 agreement. Developers would have the opportunity to build those developments that had become more viable through moving affordable housing, but the requirement would be removed after 12 months.

The amendment is intended to address a situation where a developer has received an amendment to a section 106 obligation, or has had his or her responsibilities removed entirely under the section, so that they would not delay the development further. Under the amendment, the developer would be required to start the development within one year. Having regard to the renegotiated section 106 arrangement that would mean that the development could go ahead without— possibly, under better economic circumstances—reverting back to the original requirements. Although clause 5 is not desirable in itself, if the aim of the Bill is to promote growth it should enable as much affordable housing as possible to be delivered in the short term.

The Minister, in one of his many "support the developers at any cost" scenarios, will no doubt argue that what the amendment is intended to achieve will be very difficult. All sorts of matters might hold up a development within a 12-month period, so perhaps he will give examples of those. However, even if that were to happen, there are important things to remember.

First, the Minister pointed out that planning permission is a licence to develop, not an obligation. I am not sure how the Government, with regard to section 106, will do anything to promote development beyond a renegotiated 106 obligation if, under English planning legislation, there is just a licence to develop over a period of three years.

Secondly, putting a short provision into the new section, to the effect that the development must be done under a negotiated 106 agreement, might give impetus to get the planning application—or planning licence—up and running. Under the affordable housing provisions, a developer who made an application for an unviable scheme would be told that unless it could be done within a year, the original section 106 agreement would be reverted to. That would, I hope, do two things. It would allow the developer to analyse the entire unviable development and say, "Can we get this done if 106 is removed within that time scale? If we can't, we won't make an application to the Secretary of State under section 5 to be able to do so."

On amendment 77, you will be pleased to hear, Mr Howarth, that the handwriting gets progressively worse, so rather than my wasting the Committee's time, I shall sit down.

4.15 pm

Nick Boles: I have enormous sympathy for the hon. Gentleman, who did a lot better job of sounding like he knew what he was talking about than I am about to.

Let me briefly respond to amendments 74 and 77 before moving on to the Government amendments in the same group. We discussed fairly fully in relation to a previous group of amendments whether a one-year period or, as the Government propose, a three-year period is a reasonable one in which to expect developers to act on the basis of a new agreement on affordable housing, and to build the development out. Although in the case of very small developments it might well be reasonable to expect movement within a year, we will obviously not be able to distinguish different time limits for different scales of development. The whole purpose of the clause—I accept that the Opposition do not share this analysis—is to get builders building as much as possible in the next few years. I believe that a year's grace period within which to fulfil this agreement would simply be likely to lead to developers not taking advantage of this route at all, or to their having another go and causing everybody an unnecessary layer of effort and cost. On that basis, we have decided to propose a three-year time frame, and I hope I will be able to persuade the hon. Member for Edinburgh South to live with it and therefore withdraw amendments 74 and 77.

Turning to the Government amendments in the same group, amendments 37 to 39 insert default provisions regarding the time limits for making appeals. Amendment 38 inserts a default provision that an appeal must be made within six months of the relevant determination or expiry of the determination period. The six-month limit for appeals is in line with other appeal procedures and is necessary to ensure that viability evidence is up to date and relevant at the time of appeal. Amendment 39 disapplies the 28-day period for PINS decisions to allow PINS to undertake any necessary procedures. Amendments 48 and 49 ensure that appeals under section 106BB can be determined by the Planning Inspectorate on behalf of the Secretary of State from the day the clause comes into force.

Under clause 5 as currently drafted, decisions made by the Planning Inspectorate on appeals are valid for three years only, by which point a new agreement has to be reached for development of the scheme to continue. The three-year period provides an incentive for developers to get on and build, as we have just discussed. To avoid uncertainty at the end of the three-year period, amendments 43 to 45 bring in a default position so that after three years, development can continue in the absence of an agreement between the developer and the local planning authority. Here, as an incentive to the developer to take advantage of the new agreement, the default is that the affordable housing requirement revert to what it was before the first application was made under the new provision.

Amendment 43 also allows necessary modifications to be made by the Planning Inspectorate as part of the default provision when it considers an appeal. The inspectorate can make two kinds of modifications: first, those necessary to ensure that the requirement does not relate to development already commenced, as this could make it impossible to fulfil the obligation—for instance, where 95% of the development was already complete and the agreement required 40% affordable housing on site; and secondly, those necessary or expedient to ensure the effectiveness of the default provision at the end of the three-year period. This allows the Planning Inspectorate to apply common sense in providing for changing circumstances, while maintaining the intent of the default provision, which is to return to the affordable housing provision of the original agreement.

I should make it clear that this default does not apply to local authority decisions, so if local authorities willingly reach agreement with developers to vary affordable housing obligations within a 106 agreement, that will not be subject to the three-year cut-off and the default proposed in the amendments.

Amendments 40, 41 and 42 are technical amendments that affect the operation of the clause, and confirm that the three-year decision period does not apply where the Planning Inspectorate has upheld the local planning authority's determination. Where a developer loses an appeal to PINS, and the local authority's position is upheld, there is no three-year limit on the decision and no default provision.

Mr Raynsford: I may not have heard the Minister correctly, but I thought that he said that one of the amendments will allow the Planning Inspectorate greater time to consider issues of viability than would otherwise be available to it. He will recall the debate we had last week on common standards of performance, in which I moved an amendment that asked for the same performance standards to apply to the Planning Inspectorate as would apply to local authorities. His reply, in rejecting that amendment, was that the greatest safeguard we could have would be his embarrassment at a failure to perform to the same standard as was expected of local authorities. Would he now please explain himself?

Nick Boles: The right hon. Gentleman has demonstrated to the whole Committee why he had such an illustrious career in Government. Even though I read through that pretty quickly—it was certainly a blizzard to me—he nevertheless picked out the one point that I thought that he might, so I pay due credit to him for doing so. It would clearly be shocking if the Planning Inspectorate ends up requiring a great deal more time than we as a Government expect local authorities to take.

We want to disapply the 28-day limit because there is a key difference between the inspectorate and the local authority: the local authority, of course, negotiated the agreement in the first place, so it is entirely familiar with all the considerations that went into producing that agreement because it is the planning authority with which the agreement was concluded, the site is in their area and it is familiar with all the issues that need to be dealt with in the process of assessing the viability, or otherwise, of the affordable housing component.

The Planning Inspectorate, while well-resourced and staffed by highly skilled people, does not have that advantage. Therefore, while I am keen to be extremely demanding of the Planning Inspectorate in terms of its performance, I do not want to place a wholly unfair expectation on it. Although it may well be entirely fair for me to be embarrassed, I do not want the Planning Inspectorate to be subject to an unreasonable demand.

I absolutely do not want the provision to become a licence for the Planning Inspectorate to put something at the back of the pile as a low priority and to sit on it, because the Government's intention in the clause is to accelerate the process of building out of stalled sites. However, we feel that it is unreasonable to expect the Planning Inspectorate to meet the 28-day limit in every case, given that this will be the first time that it has seen the proposal. On that basis, I hope that the right hon. Gentleman is, at least, moderately reassured.

Ian Murray: The Minister uses the term "moderately reassured", and in that spirit I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ian Murray: I beg to move amendment 75, in clause 5, page 7, line 10, after 'market' insert—

'but not including requirements for land on the site to be reserved and transferred at nil cost to a local planning authority or registered provider of social housing'.

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

Government amendments 36 and 47.

New clause 2—*Requirement for local development documents to contribute to social cohesion and inclusion*—

'In section 19 of the Planning and Compulsory Purchase Act 2004 (preparation of local development documents) after subsection (1A) insert—

'(1B) Local development documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to social cohesion and inclusion by addressing the needs of all sections of the community and in particular requirements relating to age, sex, ethnic background, religion, disability and income."'.

Ian Murray: Perhaps the next private Member's Bill that goes through the House could suggest that all elected Members, when producing speeches, should have them fully typed and not in their mother handwriting.

Our amendment and new clause both highlight the importance of building balanced, sustainable and mixed communities. Unamended, the clause looks set to undermine that aim, and where affordable housing is still delivered, it may not be on the same land as the original development.

Amendment 75 would alter proposed new subsection (12) to remove land from the section 106 affordable housing change, and is connected to amendment 70, which we have just debated. When a developer seeks to persuade the Secretary of State that their development is unviable and that an affordable housing element should be removed from it, the amendment would protect any land put aside for the development, to ensure that it stays as part of the development and is available to a registered social landlord or the local authority to utilise if possible. That would link to amendment 70, if the registered social landlord had access to the £300 million that the Government have announced twice—perhaps not 23 times. Although a developer might have already submitted a planning application that qualifies the number of affordable houses—perhaps even where on the site they would be built or whether they were to be incorporated into blocks that are not stand alone—a land allocation for affordable housing is specifically excluded.

New clause 2 should be considered alongside clause 5. It would put in the Bill the need to ensure that development contributes to the goals of "social cohesion and inclusion." It is vital that the health and well-being of any community, rather than simply developer profits, are used to inform planning. The Town and Country Planning Association has warned that the measure could lead to "socially polarised communities."

We are promoting the amendment and the new clause to ensure that if the developer is able to persuade the Secretary of State that the development is unviable on the basis of the social housing element, the land is protected. That is not only to provide affordable homes, but to ensure that developments are properly mixed in terms of their development and social cohesion, which the Minister has alluded to several times today and which we all wish to see in new developments across the country.

Nick Boles: The entire Committee will have great sympathy with the concern that underlies the amendment. Land is the most precious contribution that a 106 affordable housing agreement can make, particularly in areas of high land value. If one talks to any social housing landlord, land is often the thing they find hardest to come by, particularly land in a larger development, which is necessary to create a mixed community.

The difficulty with the amendment is that there will obviously be cases where land is the financial burden—the cross-subsidy—that the developer is asked to take from the market end of the development. If one were therefore to exclude such land entirely, some schemes would be simply impossible to renegotiate at all, because land is the entire contribution, or the vast bulk of the value of the contribution, that the developer was asked to make under the original agreement. There would therefore be no way to renegotiate, because there was nothing to play with except the land.

We will resist the amendment, but I am happy to make it plain in the guidance given to local authorities—although they will of course do what is best for their communities—and particularly to PINS that they should always be willing to look at negotiating other elements and forms of contribution in an affordable housing agreement. They should be willing to look at those before looking at the land, particularly in high-value areas. I do not want to bind their hands entirely, because that may mean that they end up with nothing to negotiate. It is absolutely clear that the whole House feels that the land should, in a sense, be a last resort in the renegotiation. I hope that, with that reassurance, the hon. Gentleman will feel able to withdraw the amendment.

4.30 pm

New clause 2 obviously seeks to place social inclusion and cohesion on a statutory footing for local development documents. The Government are clear about the important role played by planning in contributing to inclusive communities and as a result, robust measures are already in place in primary legislation and national planning policy. Sustainable development is at the heart of the planning system, which is recognised in section 39 of the Planning and Compulsory Purchase Act 2004.

Contributing to a strong, healthy and just society is an important element of sustainable development. That means meeting the diverse needs of all people in existing and future communities, promoting personal well-being, social cohesion and inclusion, and creating equal opportunity. The national planning policy framework also makes it clear that the purpose of the planning system is to contribute to the achievement of sustainable development. It reaffirms that planning has an economic, social and environmental role in contributing to sustainable development, and that those roles are interdependent.

By law, local planning authorities must have regard to national planning policy when preparing development plan documents. They are also required by law to submit those documents for an examination carried out by an independent inspector in public. As part of that examination, the inspector must determine whether the plan is sound, which includes its being consistent with all the national policies to which I have referred. Such documents are also subject to the sustainability appraisal under section 19(5) of the Planning and Compulsory Purchase Act.

Planning bodies are already subject to the public sector equality duty under section 149 of the Equality Act 2010, which requires authorities to consider the needs of people who share protected characteristics, and to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between people of different groups.

I hope that it is clear to the hon. Gentleman and other hon. Members that the protection they seek in new clause 2 already exists in statute and the guidance that planning authorities have to follow in making decisions. Therefore, although the new clause is entirely admirable in intent, it is not necessary to include it in the Bill.

Ian Murray: I appreciate what the Minister has said. When we discussed the affordable housing element, Opposition Members were very unhappy at its removal from developments in relation to what the clause is meant to achieve. Where land is involved, it is important that it should be reserved for such purposes. I take the Minister's assurances that mechanisms are in place for a whole host of options, of which land would be the last to be looked at.

Mr Raynsford: We have not heard from the Minister an explanation of the two Government amendments. If I had not intervened, we could perhaps have simply killed them, because they might not have been moved, but I want to hear the Minister's explanation.

The Chair: I think Mr Raynsford was making an intervention. Mr Murray, have you concluded?

Ian Murray: Given the procedural difficulties, it might be best if I conclude to allow the Minister to talk about the Government amendments. Otherwise, we might have an even worse Bill than we do now.

Nick Boles: I am grateful to the hon. Gentleman and to the right hon. Member for Greenwich and Woolwich for allowing me to correct that mistake. I pulled out a section of my speaking notes, and so omitted to speak about the Government amendments, which I am now happy to do. It will be their fault, shall we say, if the amendments do not produce the desired result.

For the purpose of the provision, the definition of the affordable housing requirement relates to

"the provision of housing that is or is to be made available for people whose needs are not adequately served by the commercial housing market (and it is immaterial for this purpose where or by whom the housing is to be provided)".

The reason why we are proposing such a broad definition to cover the variation in section 106 agreements is because an overly precise definition of the term could mean that some obligations may fall out of scope, if not now then in the future as affordable housing agreements change.

I stress that the definition will only apply in the context of the clause. Importantly, it does not seek to alter the definition of affordable housing in other contexts, and therefore is not in any way an attempt to somehow dilute the commitments and the obligations placed on developers and authorities to bring forward housing that is truly affordable.

Amendment 36 allows the Secretary of State to amend the definition by order, simply and exclusively for the purposes of the clause. That will ensure that the definition can keep up with new forms of affordable housing and new ways of providing that housing, set out in section 106 agreements. It serves to future-proof the legislation without it having to return to Parliament for minor adjustments to be made.

Amendment 47 ensures that any changes to the definition have to be made by order, subject to affirmative procedure. I assure Members that that only applies to the definition of affordable housing for the purposes of this clause. I hope, therefore, that the Committee will be willing to support the amendment.

Mr Raynsford: I have to say that I am rather troubled by the Minister's defence of the amendment, which I thought he was going to allow to lapse by not announcing it. As he says, the amendment allows the Secretary of State to amend a definition, which applies only to this clause, but I am afraid it is not just a matter of future-proofing. If the Minister looks at the amendment, he will see that proposed subsection (12B) allows an order from the Secretary of State to

"have effect for the purposes of planning obligations entered into before (as well as after) its coming into force."

That seems to me like past-proofing, rather than future-proofing, so I would welcome an explanation as to why the Secretary of State is to be given a power to apply retrospectively to a definition of affordable housing that could be the subject of litigation—an issue we will come to later when we deal with schedule 2—and could be very controversial indeed. I am extremely uncomfortable with this retrospection. Given the concerns voiced in the House and the other place about retrospection in legislation, I hope we will have a full explanation of why the Minister believes it is necessary.

The Chair: I call the Minister.

Nick Boles: The Minister is just trying to formulate in his mind that full explanation of why the clause is drafted as it is. Would the right hon. Member for

Greenwich and Woolwich like me to talk about other issues while I receive further advice, or would he be satisfied—

James Morris (Halesowen and Rowley Regis) (Con): Will my hon. Friend give way?

Nick Boles: I am delighted to give way.

James Morris: I am very grateful to the Minister for giving way. I feel reassured by what he was saying about the consistency of the definition of affordable housing and how it will apply in the provision. It is important that we have a consistent definition, which only applies to this part of the Bill and this clause, and does not lead to the kind of concerns that were raised by the right hon. Member for Greenwich and Woolwich in relation to a definition of affordable housing that might be wider and may cause more difficulties than it is designed to solve.

Nick Boles: I am grateful to my hon. Friend for his intervention, which was helpful—if not quite helpful enough. Would it be—

Mr Raynsford *rose—*

Nick Boles: I am happy to give way.

Mr Raynsford: I am most grateful to the Minister for giving way and I am sure he will be grateful too. I was about to point out that after the intervention of the white knight on the Government benches we now have the return of the red cavalry on the Opposition benches. Hopefully the debate can continue in the good spirit in which we have so far found it possible to proceed. I am worried that if I go on any longer I will incur the wrath of the Chairman, so I had better bring this intervention to an early halt.

Ian Murray: Will the Minister give way?

Nick Boles: I am happy to give way.

Ian Murray: I congratulate the Minister on his fruitful explanation—so far—of the question posed by my right hon. Friend, and I am looking forward to the response.

Nick Boles: I am grateful to all members of the Committee for trying to help me out. I am not satisfied that the Committee has received a good explanation of why the provision can be applied retrospectively. If I might, I would like to return to the subject with the figures. I must admit that I was not aware until the right hon. Member for Greenwich and Woolwich raised the issue that it would apply retrospectively, because the entire argument I put forward was about potential future changes in the way the affordable housing market works. I shall pursue that if I may, correct it in whatever is the most efficient way possible and write to members of the Committee if I am not able to speak to them about the change personally. On the basis of my assurance, I hope that the right hon. Gentleman will accept the intent behind my explanation of the amendments even if it was not worded as clearly as it might have been.

The Chair: Let us deal with that which we can deal with reasonably, which is amendment 75.

Ian Murray: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 36, in clause 5, page 7, line 21, at end insert—

'(12A) The Secretary of State may by order amend this section so as to modify the definition of "affordable housing requirement" in subsection (12).

(12B) An order under subsection (12A) may have effect for the purposes of planning obligations entered into before (as well as after) its coming into force.'.

Amendment 37, in clause 5, page 7, line 37, leave out 'and in such manner'.

Amendment 38, in clause 5, page 7, line 38, at end insert—

'(3A) If no period is prescribed under subsection (3), an appeal under this section must be made—

(a) in relation to an appeal under subsection (1)(a), within the period of 6 months beginning with the expiry of the period mentioned in section 106BA(9) that applies in the applicant's case, or

(b) otherwise, within the period of 6 months beginning with the date on which notice of the determination is given to the applicant under section 106BA(9).

(3B) An appeal under this section must be made by notice served in such manner as may be prescribed by the Secretary of State.'.

Amendment 39, in clause 5, page 7, line 39, after first 'to' insert '(8), (10) and'.

Amendment 40, in clause 5, page 7, line 41, leave out '(5)' and insert '(4A)'.

Amendment 41, in clause 5, page 7, line 41, at end insert—

'(4A) References to the affordable housing requirement or the planning obligation are to the requirement or obligation as it stood immediately before the application under section 106BA to which the appeal relates.'.

Amendment 42, in clause 5, page 8, line 2, after 'State' insert '—

(a) does not uphold the determination under section 106BA to which the appeal relates (if such a determination has been made), and

(b) '.

Amendment 43, in clause 5, page 8, line 6, leave out from 'period' to end of line 17 and insert

', the obligation is treated as containing the affordable housing requirement or requirements it contained immediately before the first application under section 106BA in relation to the obligation, subject to the modifications within subsection (8A).

'(8A) Those modifications are—

(a) the modifications necessary to ensure that, if the development has been commenced before the end of the relevant period, the requirement or requirements apply only in relation to the part of the development that is not commenced before the end of that period, and

(b) such other modifications as the Secretary of State considers necessary or expedient to ensure the effectiveness of the requirement or requirements at the end of that period.'.

Amendment 44, in clause 5, page 8, line 18, leave out 'subsection (8)' insert 'subsections (8) and (8A)'.

[Ian Murray]

Amendment 45, in clause 5, page 8, leave out lines 21 and 22 and insert—

'(10) Section 106BA and this section apply in relation to a planning obligation containing a provision within subsection (8) as if—

(a) the provision were an affordable housing requirement, and

(b) a person against whom the obligation is enforceable were a person against whom that requirement is enforceable.

(10A) If subsection (8) applies on an appeal relating to a planning obligation that already contains a provision within that subsection—

(a) the existing provision within subsection (8) ceases to have effect, but

(b) that subsection applies again to the obligation.'.—*(Nick Boles.)*

Question proposed, That the clause, as amended, stand part of the Bill.

Roberta Blackman-Woods: I apologise to the Committee for being away for part of this afternoon's sitting. I needed to be in the Chamber. I seek confirmation whether the Committee is sitting until 5.25 pm.

The Chair: That is in the hands of others, but others have indicated that that might be the case.

Roberta Blackman-Woods: That is very helpful, Mr Howarth. Thank you.

I want to refer again to the NPPF and ask the Minister why the clause is necessary at all. Paragraph 205 of the NPPF states:

"Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planning development being stalled."

It seems clear that the provisions of the entire clause are dealt with already by the NPPF. That comes back to the point that we were making this morning to the Minister to which we did not receive a satisfactory answer. Why are the Government now saying in contrast to what they said while we were discussing the NPPF that, in order for the framework to take effect, specific legislation must be brought forward? I again ask the Minister to be really clear about that issue.

My general comments about the clause are on matters that we have not particularly looked at in detail. No evidence whatever has been provided to suggest that section 106 generally and its affordable housing component specifically are responsible for the stalling of development in the United Kingdom. So many organisations have objected to the clause that it is an arrogant Minister indeed who would refuse to listen to them. From the evidence presented to the committee, the only people in favour seem to be the Home Builders Federation, and even they had some qualifications. I am not clear about the extent to which they have been covered, because I have been absent, but I am sure that the Committee did a splendid job in looking at them.

4.45 pm

It is interesting that the impact assessment cites only two pieces of evidence, and they are worth considering briefly. I emphasise that because what is proposed in the Bill is radical, despite the Minister's protestations that it is only tinkering at the edges, that only a couple of authorities will be caught by it, and so on. The change is quite radical for planning policy, and 106 applications.

The first point is how 106 agreements are being framed, and we touched on that earlier. The language is about costs and obligations. There is nothing in the impact assessment to show why section 106 agreements are there at all, and factoring in what will be lost to local communities and others by the fact that they may not be implemented. That is why we need to tread with care.

Instead, the Government are continuing with the Bill without any evidence to support it and, as we have heard, it could drastically reduce the number of housing units in the country overall. The impact assessment states categorically that 1,400 housing schemes of above 10 units have stalled, totalling up to 75,000 units, and according to the Glenigan data that seems to be the case.

One might have thought that evidence would be presented to show that stalling of sites is due to section 106, but no. There is no such evidence, and when I met Glenigan last week, it pointed out that in fact it had been told that a number of sites had stalled because of viability issues, but it is not clear what the viability relates to, and more work needs to be done on that. The impact assessment is careful, and says:

"Whilst there will be a number of factors why these sites are stalled, the value of 106 agreements, agreed in more favourable market conditions, may now be affecting … viability".

The Government are not even certain enough of their case to say that viability will be affected. That is followed by an analysis of sites in weak market areas that have stalled, but again there is no evidence that 106 agreements, particularly relating to affordable housing, are the main problem. Common sense tells us that the wider economic downturn is most likely to affect the viability of sites, and some of the people who gave evidence to the Committee suggested that. In any case, the Government should not be introducing such a drastic measure without setting out clearly how viability is to be measured, and I hope the Minister has taken that point from our earlier discussions.

Another reason for removing the clause is the huge shortage of affordable housing in this country. The National Housing Federation notes that 1.8 million families are on housing waiting lists. We know from the Office for National Statistics that we need something like 4.5 million houses in the next 25 years just to cater for the housing need that has been identified now. That does not include future housing need that might arise but has not been assessed. Despite that, recent figures from the national housing statistics show that the number of additional affordable houses in 2011-12 was down by 4% compared with 2010-11. Provision of social rented homes was also down by 3% in 2011-12 compared with 2010-11.Additionally, those homes provided by intermediate housing schemes were also down by 10% compared with the 2010-11 figures, and the number of affordable homes completed through planning obligation section 106 without grant rose by 18%, to 4,130. Of those 4,130 homes, 2,360 were for social rent, 40% were for affordable rent and 1,720 were for intermediate rent.

Figures from Shelter also suggest that, given the projected rise in the number of new households, current levels of building are simply not sufficient. I hope that the point that the Minister has taken from the figures

that I have just read out is that, although housing need is increasing, the number of affordable housing units is reducing, but section 106 agreements deliver about half of all the social housing for rent in this country. So getting rid of those agreements, even if it is only on a number of sites, is moving our delivery of affordable housing in precisely the wrong direction.

The planning Minister is also reported to have conceded that the Government are not building enough housing, saying that he wants to get back to building about 250,000 or 290,000 homes per year. I am not sure which figure he has exactly settled on, but I for one will give him his due; if he has accepted that we need these large numbers of houses to be built, I look forward to hearing from him about how that is going to happen. What we do know is that new build starts are down by 30% since the Government took office and, with housing becoming a scarcer commodity, one can only imagine what will happen to affordability. When it is a scarce resource, market conditions will mean that housing increases in price, and this is already happening in some areas. Therefore, affordability becomes more difficult for certain sections of the population.

It simply beggars belief, does it not, that given the pent-up demand for affordable housing, this clause is being introduced. I know that the Minister will say that the Government have set aside £300 million for affordable housing, but there are a number of problems with this. The first is the new definition of "affordable housing". I understand that it was debated in my absence, but I want to question the Minister on the new definition of "affordable housing", because the current definition is 80% of market rent so I am not sure where "affordable housing" can go except to 80-plus as a percentage of market rent, and that is just not affordable for many people.

Secondly, there is no indication as to whether any of the £300 million is to be spent on social rented housing. Thirdly, what is the time frame? That is very important, because we know from the figures that I gave earlier that section 106 agreements deliver a substantial number of homes for social rent, and it really is not clear where the affordable housing will be delivered from if a lot of developments go forward without affordable housing as part of the development. Nor is it clear how quickly the £300 million will be distributed to local authorities, or others, and what they will use it for. So it simply does not make sense in the midst of such a housing shortage, particularly a shortage of affordable housing, to introduce any measure—even one that the Minister might say is at the edges—that does not add to the affordable housing stock.

Is not the real reason for this absolutely dreadful clause the outcome of successful lobbying by a number of developers who simply do not want to pay for their obligations under section 106 agreements, particularly for on-site social housing? The outcome will mean less mixed communities, and affordable and social housing being banished to the most undesirable low-value sites. Such a step backwards, when we know that communities of this nature are much less likely to be sustainable in a number of ways, has got to be questioned.

In its written evidence to the Committee, the Town and Country Planning Association stated that the changes to section 106 agreements

"will reduce the...amount of land...available for affordable housing and most importantly it may lead to the kind of socially polarised communities which the planning system has striven to avoid."

The Campaign to Protect Rural England also raised the issue of land availability. It asked—quite rightly—how, without section 106 agreements, land would available for affordable housing. The Minister needs to tell us how the £300 million that has been set aside for affordable housing will ensure that land is brought forward. In all that the Government have said about that sum of money, I have not heard any reference being made to ensuring that land will be available.

The Highbury Group wisely says that the Government should seek

"to maximise the supply of affordable housing in all parts of the country likely to be affected by the impact of the cap on housing benefits in April next year".

So we are not talking about only a few areas here and there. There is now going to be a huge need for affordable housing just to cope with another measure in the Government's programme, which is likely to mean that people will have to move out of the housing that they currently occupy. The Highbury Group also points out that ATLAS best practice guidance encourages local authorities to put in

"formal mechanisms for review"

every three years, when conditions apply. There is already best practice out there, so I am not sure why the clause is necessary.

Barratt points out that the resulting renegotiation of section 106 agreements that the clause would entail could mean that sites currently under consideration would be further stalled. As several organisations have made clear, there is simply no need for the clause, because there is already a formal procedure in section 106A of the Town and Country Planning Act 1990, which allows developers to apply, once five years have passed, for the modification or discharge of planning obligations. Secondly, as we have often noted, local authorities are already renegotiating section 106 agreements. They are doing that on a voluntary basis and with the needs of their local communities in mind. In the spirit of localism, they should be left to get on with that and the task of developing much-needed sustainable mixed communities. The Minister should remove the clause from the Bill.

Mrs Mary Glindon (North Tyneside) (Lab): As the Minister said, the Bill is about growth. It has been pointed out by many of the people who submitted evidence to the Committee that the Bill makes no sense at all in relation to growth. It simply does not address the wider economic issues relating to demand, access to mortgages, and development finance. The Minister has said that we all wish to see mixed communities on housing developments, but the clause does not aim to engender such a mix.

Today I checked out the number of people waiting for social housing from the council in North Tyneside. As of this week, there are 4,686 applicants. We must change the culture and ensure that social housing is a priority. It is a culture that we need to foster, and nothing in the Bill sends out the message that creating social housing is in fact a priority.

James Morris: The hon. Lady talks as though the housing waiting list was the creation of the past two years. I remind her that the previous Government—a Government whom she supported—saw a fall in the

[James Morris]

number of social houses for rent of 421,000. I therefore do not think that the Minister should be taking any lessons from the hon. Lady, who presumably supported a Government who presided over a catastrophic fall in the number of social houses for rent.

5 pm

Mrs Glindon: I should like to inform the hon. Gentleman that in North Tyneside we were given the go-ahead under the Labour Government to build older people's homes for the future. Unfortunately, I have to say that the Conservative mayor of North Tyneside put paid to that. Even when she was not mayor, she applied to the Labour Minister at the time begging him not to allow the plans to go forward.

As has been said, councils are responding to the change in economic circumstances and are negotiating section 106 agreements. Only 2% of councils are refusing to do that, so is there any necessity for the Bill? I know that other hon. Members want to speak, so I will sum up by saying that there is no promotion of growth, no promotion of localism, no definition of viability, no commitment to social housing and no need for clause 5.

Mr Raynsford: Frankly, the clause is a mess. It was clearly prepared in a hurry. No justification has been advanced. In fact, it is based on conjecture rather than evidence. It has been introduced against the thoughtful and unanimous opposition of the Conservative-led Local Government Association and against the advice of planning experts, who gave clear evidence to us that they did not like the clause's content and did not feel that it was likely to be effective. It threatens to reduce further the already inadequate provision of affordable housing in this country. As we discussed this morning, it threatens to destroy long built-up mechanisms for delivering affordable housing on exception sites in rural areas. It threatens to undermine the provision of mixed communities, as my hon. Friend the Member for City of Durham rightly highlighted in her speech.

Clause 5 also introduces some extremely questionable powers for the Secretary of State, including the one that we partially debated recently which allows the Secretary of State to rewrite the definition of affordable housing retrospectively. I must tell the Minister that I sincerely hope he lives up to his pledge to give further thought to the clause, because if I were him, my inclination would be to withdraw it and to reintroduce it amended on Report, rather than railroading it through in Committee where he was unable to offer a rationale, let alone a defence, for it. It comes to a pretty pass when a Minister is unable to offer a defence of an amendment tabled in his name, but that is what we have heard this evening.

The Government, with their majority, may choose to push clause 5 through tonight and through the House on Report, but it does not deserve to go through. I sincerely hope that when it comes to be considered in another place, where there is no partisan majority, we will see serious amendments of the sort that we have moved unsuccessfully today. This is a damaging clause that is part of a damaging Bill, and it does not deserve to pass into law as it stands. It requires fundamental rethinking if not total withdrawal.

Paul Blomfield: In view of the time, I will not repeat the many points made by my right hon. Friend in his devastating critique of the clause. However, I congratulate the Government, because they have brought together the most extraordinary coalition of opposition to the Bill. There is not a professional body nor a witness we have heard from who will defend the Bill, and the Minister is obviously struggling. Above all, however, as my right hon. Friend just mentioned, the Conservative-led Local Government Association made the point on two clear grounds. First, as we heard from witnesses, the clause will not achieve its objective of stimulating economic growth. We all know that the problems are down to access to mortgages and to development finance. Secondly, as hon. Members have pointed out, it is unnecessary because councils are already exercising their current opportunities to renegotiate section 106 agreements voluntarily. The Minister talked about research that demonstrated the contrary. The most recent research that the LGA highlighted shows that only 2% of councils are refusing to renegotiate.

When faced with that evidence the Minister says, "Never mind, it probably won't work but we will only have wasted our time, so what's the problem?" There remains a problem because it is not simply that the measure will not work, it could be counter-productive. First, developers who see the opportunity for new legislation, which will itself take time, will pause. Far from advancing developments, the Bill will cause further delays. Secondly and more importantly, it will put affordable housing at risk. The Government's own assessment from DCLG is that development at between 333 and 666 sites will potentially be at risk because of the clause.

Finally, the evidence from the Town and Country Planning Association negates the Minister's own aspirations for socially mixed sites. It is devastating:

> "The effect of the reforms to Section 106 agreements will be to reduce the quantum of land for affordable housing and risks increased social polarisation on particular sites."

The Minister is wrong to say that we should not worry because we will only be wasting our time. By agreeing to the clause we will be going further and damaging the opportunities to extend affordable housing.

Ian Murray: I, too, will be brief given the time. It is worth reflecting on the contribution from my right hon. Friend the Member for Greenwich and Woolwich when he pressed the Minister on the definition of some of the Government new clauses and amendments. They should probably be withdrawn and brought back on Report. I suspect we will see amendments to those amendments at other stages of the Bill, which I do not think is acceptable on something so important in terms of delivering affordable housing.

We have heard absolutely no evidence from the Minister for the provisions. He mentioned the CBI and the British Chambers of Commerce but throughout the whole period when we took evidence, those were the only two organisations to suggest there might be a problem. Even they did not have concrete examples; it was anecdotal rather than solid evidence.

We have to ask why we are restricting the provisions to affordable housing. While I appreciate that the definitions that the Minister has given for affordable housing are not directly affected by any development in provisions for schooling or transport or other measures that are

included in section 106s or, for the Minister's benefit, section 75s in Scotland, which are similar, it seems strange just to outlaw affordable housing when it comes to viability. Indeed the Law Society and Barratt Homes made that point in their written submissions.

What if the viability of a scheme is for something other than affordable housing but affordable housing is the thing that falls because that is what the developers can go back to? David Orr said:

"This is an interesting clause, because it is implicit in it that the affordable housing element of the planning obligation is primarily responsible for consented sites not being built out. That is an assertion that we have heard consistently, but we have seen little real hard and fast evidence to demonstrate it."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 13 November 2012; c. 59, Q42.]

Renegotiations are happening all the time. The LGA provided some examples to the Committee in its submission on the clause. There is a list of sites right across the country that have become difficult to develop over time and where councils have been able to renegotiate, including the Secretary of State's own favourite, Haringey in London, which has had a major renegotiation of a section 106 in terms of affordable housing. Who looks at viability? Is it about profit? Is it about the entire scheme? Is it about the affordable housing element as such? Picking on that makes it quite difficult to achieve.

The clause has significant implications for affordable housing in this country. Councillor Jones said:

"The problem is that there is now anecdotal evidence that developers are postponing starting on those sites"—

available to them—

"because if they wait 12 months they can probably remove a great deal of the cost called affordable housing."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 13 November 2012; c. 20, Q40.]

Councillor Jones told us directly that although the Bill has been in the public domain for only a short period, evidence is starting to build up that it will affect affordable housing. Indeed, the National Housing Federation, in its submission to the Committee on Second Reading, said that the Bill has the potential to affect 35,000 affordable homes a year at the stroke of a pen.

The real danger, as the wonderful contribution made by my right hon. Friend the Member for Greenwich and Woolwich illustrated, is that the measure will undermine the country's entire affordable housing policy. That will be damaging not just for housing, but for growth in the construction sector and for the ladder of housing opportunity that I spoke about while reading a colleague's notes in an earlier debate. It is important that the clause is removed from the Bill, or that if the Government are minded not to remove it, they go away and bring back something on Report that will achieve what we are looking for.

I finish on the land price issue. When I was a vice-chair of planning in Edinburgh—albeit under a different planning system, but the rules are roughly the same—we tried to drive down the cost of land in the city to allow provision for large levels of affordable housing that would make land values drop in order to kick-start development. If that possibility is removed and developers are allowed to remove specifications that depress land prices, the ability to develop sites in the short and long term will be lost. Connected to that, if we do not build affordable homes, the housing benefit bill will continue to rise as more people head to the private sector and pay rents that are way above public sector rents. Even market rents will increase the housing benefit bill, and some of the Government's housing benefit changes are putting considerably more pressure on public and affordable housing than was the case before, so the spiral of decline in affordable housing will continue. This is a really bad clause in what is already a bad Bill. The Minister should reflect on removing it altogether.

John Howell: The localism to which the Opposition now seem absolutely wedded is a two-part system; it was a two-part devolution. As an aside, I sat through the Localism Bill and received the most hostile reactions to localism from the Opposition, so it is good to see that they have had a change of attitude.

The two-part devolution was in one part down to councils and in the other part down to the people themselves. The first part of the Bill deals with councils that cannot or will not let go. Clause 1 is a good example and, as we have heard, it applies only when there is no alternative. Part of the Bill is to provide those councils with the tools to be able to do the job, if they need them and if they need encouragement, and that is what this clause is all about.

The unstalling of developments will release a whole lot of development, which is a major component to growth. Unlike the Opposition, I listened to what the Minister said; he pointed to a number of surveys that illustrated that point. On viability, I advise the Minister to steer away completely from the Opposition's simplistic assessment to look at companies' profitability. He needs to look at viability in the round on the sites concerned. Assessments are being conducted all the time by some councils, without assistance from any of the measures that the Opposition put forward as amendments. Those councils are doing the assessments happily, and good luck to them. The clause is about dealing with the councils that will not or cannot do that. I advise my hon. Friend to stick to his guns and carry the clause through.

5.15 pm

Nick Boles: We have had a lively and interesting day, which has ended on the most extraordinarily wild alarmist bluster from the Opposition. Opposition Members, among them former Housing Ministers, seek to cover up their woeful failure to deliver housing during a sustained economic boom at a time when credit was cheap. I hope that you will bear with me, Mr Chairman, while I read out for the Committee's benefit what I call evidence of real failure to deliver affordable housing. This was the affordable housing supply year by year: in 1997-98 it was 47,000; in 1998-99 it was 42,000; in 1999-2000 it was 35,000; in 2000-01 it was 33,000. It did not rise to 38,000 until 2003-04. It then rose to 45,000 in 2005-06.

Mr Raynsford: Yes.

Nick Boles: The former Minister takes some hope from the fact that he managed to get it up to 45,000 in 2005-06. Unfortunately, it reached 60,000 only in what year, pray? Yes, of course: in 2010-11 and 2011-12. Both those years followed the recession that they helped engineer through their irresponsible policies. They came after the recession, the credit crunch and the unavoidable cut in subsidy. They spent so badly through the previous

[Nick Boles]

10 years as to produce those woeful figures in the 30s and low 40s. It is only since this Government were elected that affordable housing has been constructed—60,000 homes in 2010-11 and 58,000 in 2011-12. I have the figures here, and I am happy to include them in the record. The evidence is clear: they failed, and there is nothing that they can say about the clause, the Bill or this Government that will persuade anybody here or the British people that that record of failure is not stark.

Henry Smith (Crawley) (Con): Is it not also the case that when the previous Government left office, house building was at its lowest level since the 1920s?

Nick Boles: Of course. That is not for want of public money spent in an attempt to engineer it. The amount of subsidy for affordable housing was vastly greater than we can afford, yet this Government are ahead of track. We originally committed to 150,000 homes, and we are now on track to produce 170,000, despite the cut in subsidy that we had to make due to the economic and fiscal situation that Labour left us. Let us be clear about the premise from which we are starting. We have nothing to learn from the Opposition about how to engineer the affordable housing that we all believe in.

Let us look at the evidence for the measures proposed in the Bill. They are simple. The hon. Member for City of Durham cannot have it both ways. Perhaps the many local authorities that are renegotiating the affordable housing element of their section 106 agreements in order to unblock stalled sites—be they Labour-controlled, Liberal Democrat-controlled, Conservative-controlled or with no overall control—are making an appalling attack on affordable housing, cohesive communities and all the values that Opposition Members hold dear. If so, I would expect to hear some criticism of those authorities from Opposition Members. Either what they are doing is appalling, and what we are doing to try to make other authorities do the same is also appalling, or it is not.

If it is, as the hon. Lady has said, exactly what a responsible local authority should be doing, Labour should welcome it. Many of their own authorities have been doing it in order to get buildings built so that people can live in them. She knows full well that we are proposing only to put pressure on recalcitrant, stick-in-the-mud authorities that fetishise figures and agreements rather than roofs over people's heads. All that we are trying to do is get them to follow the example of other authorities. She cannot have it both ways. Either local authorities are doing a terrible thing, or what we are proposing to do is entirely justified.

Roberta Blackman-Woods: In many ways, I am sorry to interrupt the rant but I thought I might argue for "she" herself. I thought we had made it clear that we accept that in some circumstances local authorities may wish to renegotiate. However, we put forward a number of amendments that he rejected to time limit that, so that the impact on affordable housing and its delivery would be as little as possible. We also wanted the £300 million to be put into those stalled sites so the building of affordable housing could continue. The Minister needs to address those points.

Nick Boles: Long though the hon. Lady's intervention was, no explanation of the inconsistency in her position was provided. Those local authorities are doing what we want all local authorities to do. I accept that a few of them—not 2% but it might be 0.2%—will be caught by this. There are local authorities refusing to deliver actual buildings for their people because they are so concerned about maintaining these agreements. We are giving them a healthy nudge, possibly even a kick, to get them to do the right thing by their people.

We have had claims that there is no evidence, that in the evidence sessions we heard nobody suggest any support of any element of the Bill, let alone clause 5. Let me quote the representative of the organisation that does an important thing in this country. What is that? It is building houses. The Home Builders Federation are the people who actually build these things. He said,

"We are not against the provision of affordable housing in pursuit of mixed and balanced developments. This is solely a clause about the viability of development…either the money is not coming in from that affordable housing element, or the economics of the development of the site have changed for other reasons, and therefore the site is not coming forward for development."

Mr Whitaker was answering a question from the right hon. Member for Greenwich and Woolwich, so he continued,

"While they are not in your constituency, I can take you to a number of sites that are not coming forward because of development viability, and the largest part of that viability calculation is the amount of money that needs to be made to cross-subsidise affordable housing.—[*Official Report, Growth and Infrastructure Public Bill Committee,* 13 November 2012; c. 64, Q137.]

The Opposition can call him the representative of a profiteering class of private developers. That is the implication of what we have heard in the past couple of hours. I call him a representative of the only people who are going to be able to correct 13 years of failure and actually build some houses for the British people to live in.

Mr Raynsford: The Minister will recall that evidence session and that I specifically asked Mr Whitaker of the Home Builders Federation if he was familiar with my constituency. He said that he was. I reminded him that it had a substantial number of development schemes. I asked him to name any single one of those schemes that had been stalled because of viability relating to affordable housing. He could not name a single one.

Nick Boles: I have absolutely no doubt that the right hon. Gentleman's authority is one of the many that is doing what we think is the right thing and what the Opposition feel is an abomination, that is renegotiating the affordable housing component of the 106 agreement in order to unstall sites. I simply ask that the Opposition are consistent in their criticisms. If they are critical of us for bringing forward this clause, they must criticise every local authority that has done the same without the pressure of Government legislation.

We have evidence; we have had support from the industry; and we have a clear need for affordable housing. In this clause as elsewhere in the Bill we are simply trying to complement the NPPF that pointed the way, giving clear guidance to local authorities about how to behave responsibly in the service of their communities, with a little nudge to make those few that are recalcitrant and failing in those responsibilities to catch up and do the right thing. We are not imposing a complete removal

of section 106 affordable housing agreements. The Planning Inspectorate will never suggest that, unless the viability of the site can demonstrably and objectively be shown to be failing to deliver any development at all.

We are trying to get a pragmatic solution to a crisis that has existed for 20 years, through a boom under a Labour Government, and which has persisted through the financial crash and the recession that they helped create. We are determined to ensure that our affordable housing figures remain better than those of the last Labour Government in any year that it was in office. I commend the clause to my colleagues and other Committee members, because this is a pragmatic step to helping ensure that that is so.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 10, Noes 6.

Division No. 5]

AYES

Birtwistle, Gordon	Glen, John
Blackman, Bob	Howell, John
Boles, Nick	Morris, James
Bradley, Karen	Smith, Henry
Coffey, Dr Thérèse	Stunell, rh Andrew

NOES

Blackman-Woods, Roberta	Glindon, Mrs Mary
Blomfield, Paul	Murray, Ian
Danczuk, Simon	Raynsford, rh Mr Nick

Question accordingly agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Schedule 2

MODIFICATION OR DISCHARGE OF AFFORDABLE HOUSING REQUIREMENTS: RELATED AMENDMENTS

Amendment made: 46, in schedule 2, page 36, line 15 , at end insert—

'(2A) After subsection (1) insert—

(1A) If no period is prescribed under section 106BA(9), the period of 6 weeks referred to in subsection (1)(b) that applies in relation to proceedings for failure to give notice as mentioned in subsection (9) of section 106BA begins with the expiry of the period mentioned in that subsection that applies in the applicant's case."'.—*(Nick Boles.)*

Mr Raynsford: I beg to move amendment 60, in schedule 2, page 36, line 19, leave out sub-paragraph (4).

This is a probing amendment, tabled to find out why the Government were inserting paragraph 6(4), which effectively sets restrictions on actions for judicial review, prompted by a decision of the Secretary of State. The revelation about the Secretary of State's giving himself retrospective powers to change the definition of "affordable housing", which we debated recently, gives me reason for suspicion that behind this definition there might be some ulterior motive of a not entirely reputable purpose.

I should like to give the Minister the opportunity to explain why the Government are giving themselves the power to restrict the availability of judicial review in such cases. Whether it has anything to do with the Government's unhappy experience of judicial review in housing matters—I think particularly of the Cala Homes case of two years ago—is entirely a matter for conjecture, but I welcome the Government's expressing the reason for inserting this paragraph into schedule 2.

5.30 pm

Nick Boles: The provision is simply a reflection of the fact that the Government are generally frustrated by the extent to which judicial review is being used and sometimes abused. While we entirely accept that there must always be the possibility of judicial review of decisions made by Secretaries of State, and not just in regard to planning matters, the normal time frame of three months is excessive, and we would prefer to have a judicial review lodged within six weeks of determination of the applications.

The matter returns to a phrase that we have used before, which we believe is important: justice delayed is justice denied. The whole intent of the Bill is to make processes streamlined and more efficient so that we can get development going. The interested parties to any of the cases are likely to be able to form their view about the potential for judicial review within six weeks, so it seems eminently reasonable to restrict the time frame to that, rather than the three months that would usually apply.

Mr Raynsford: There we have it: another move by the Government to try to limit their embarrassment on the issue. I am afraid that that is a pretty unimpressive amendment, which is, as we have heard, designed simply to make it less easy for people to challenge Government decisions. We have come to expect that kind of amendment to the legislation. I do not like it, but rather than delay the Committee, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 47, in schedule 2, page 36, line 34, at end insert—

7A (1) Section 333 (regulations and orders) is amended as follows.

(2) In subsection (4) (power to make orders under Act exercisable by statutory instrument), after "87," insert "106BA(12A),".

(3) After subsection (5) insert—

(5ZA) No order may be made under section 106BA(12A) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament."'.

Amendment 48, in schedule 2, page 36, line 37, leave out '1(1)' and insert '1—

(a) in sub-paragraph (1)'.

Amendment 49, in schedule 2, page 36, line 39, at end insert ', and

(b) after that sub-paragraph insert—

"(1A) If no classes of appeals under section 106BB are prescribed by regulations under sub-paragraph (1), all appeals under that section are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State."'.—*(Nick Boles.)*

Schedule 2, as amended, agreed to.

Clause 6 ordered to stand part of the Bill.

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

5.32 pm

Adjourned till Thursday 29 November at half-past Eleven o'clock.