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Public Bill Committee

GROWTH AND INFRASTRUCTURE BILL

Eleventh Sitting

Tuesday 4 December 2012

(Morning)

CONTENTS

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Saturday 8 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 4 December 2012

(Morning)

[Mr George Howarth *in the Chair*]

Growth and Infrastructure Bill

Written evidence to be reported to the House

GIB 53 ifs ProShare and Employee Ownership Association

GIB 54 Mayor of London

GIB 55 City of London Corporation

GIB 56 Cornwall Councillor John V Keeling

GIB 57 The Loose Anti Opencast Network (Supplementary evidence)

GIB 58 Dalton Warner Davis

Clause 13

Restrictions on right to register land as town or village green

8.55 am

Roberta Blackman-Woods (City of Durham) (Lab): I beg to move amendment 96, in clause 13, page 15, line 26, after 'may', insert 'subject to consultation'.

The Chair: With this it will be convenient to discuss the following: Government amendment 52.

Amendment 97, in clause 13, page 16, line 1, leave out from 'apply' to the end of line 3 and add

'in relation to an application under section 15(1) of the Commons Act 2006 which—

(a) is sent before the day on which this section comes into force, or

(b) is in an area which is not covered by an adopted local plan or an adopted neighbourhood development plan.'.

Amendment 98, page 40, schedule 4, leave out lines 21 to 27.

Amendment 99, page 40, schedule 4, leave out lines 38 to 47.

Amendment 100, page 41, schedule 4, leave out lines 27 to 34.

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

This group of amendments addresses when and why a piece of land should become excluded from registration as a town or village green. The basic premise of clause 13 and schedule 4 is right, but the Minister may have been a little over-zealous and ruled out all land from ever being protected.

Clause 13 gives the Secretary of State the ability to disapply the triggers from a specific piece of land. Amendment 96 would put a requirement on the Secretary of State to set out in published criteria his reasons for choosing to do that. Here we are again—the Secretary of State is grabbing power without setting out his reasoning. He has long lauded transparency and openness, so it is baffling to say the least. There may be pieces of land that should be exempt, but we need to be clear about what the instances are, not least because without that clarity we may not see any improvement in the current situation; community groups will simply turn to the Secretary of State to exclude their piece of land from the triggers to lodge an application.

This would be an ideal place to introduce consultation, whereby local authorities, some of which have clearly had a number of issues with some town and village green applications, could set out examples of when a town or village green was rightly protected. Similarly, aggrieved community groups, which work extremely hard to protect spaces that they believe deserve protection, would have the chance to advise the Secretary of State of the circumstances that should lead to an exemption from the triggers set out in schedule 4.

I am reluctant to ask for more consultation, because on this Bill we seem to have consultation documents coming out of our ears, but it is important in this instance that clear criteria are drawn up on the basis of responses from people on the front line of making applications for village green status. The Minister could help with our deliberations this morning by setting out instances when the Secretary of State may choose to use the power, or at least giving a commitment to consultation, which would enable him to respond in an informed way.

I turn to amendment 97. Evidence to the Committee made it clear that there are inherent tensions in having the Town and Country Planning Act 1990 and the Commons Act 2006 running in parallel. The Minister of State, the right hon. Member for Sevenoaks, was kind enough in his evidence to quote from a report commissioned by the last Labour Government from the Department for Environment, Food and Rural Affairs in 2009. It stated that

"the most significant finding from this research so far is the existence of two parallel systems between which there is minimal communication: the"

town and village green

"registration process and planning system. In our view this seems to be problematic…the processes in each system rarely…take explicit account of issues/decisions in the parallel system, even though they can have significant importance for each other."

That is true, but without amendment the clause could compound the problem.

When a local or neighbourhood plan has been put in place and the community has been adequately consulted, and we have said several times in Committee that that is not necessarily easy or straightforward, the community is likely to have placed protections on their most valued green space. We accept that where there is a neighbourhood plan and there has been good consultation, that is likely to be the case. However, where that has not taken place the community will not have been through the process of identifying the areas they deem to be most valuable. I am sure we can all come up with instances from our constituencies of communities not being aware of the need to submit a village green application until they see a planning application because they are unaware that it is necessary to do so, or that a particular piece of land could ever be under threat from development.

9 am

Without the amendment, communities could find that by the time they have their say on a local or neighbourhood plan the precious spaces they want to protect have already been snapped up. Some members of the Committee seem to be under the impression that

if an area is worth developing it will have a neighbourhood plan in place, but that is simply not the case. We wish to encourage neighbourhoods to put in place a neighbourhood plan, but there simply has not been time for them to do that since the Localism Act 2011 was enacted.

When creating previous plans, parish councils may not have considered the issue in enough detail. It is important that local communities have the opportunity and enough time to identify sites they wish to protect. They can then decide which process is most appropriate for them. We want to move to a situation where those pieces of land are designated under a neighbourhood plan process. In the meantime, we want to make sure all communities are able to use the registration processes that are in place at the moment.

Local plans are intended to ensure that we get development in the right places and with community support. To take the right to protect land away from communities before the plan-making process has even begun is no way to foster their trust. I urge the Minister to take the amendment away and look at it. We do not want to stop vexatious applications being identified. However, we want to ensure that communities that have not yet identified those very special open spaces are not prevented from being able to protect them simply because they do not know that they are under threat.

Amendments 98, 99 and 100 deal with the trigger events in schedule 4. When one of the eight trigger events that are set out in the schedule takes place regarding a piece of land, that land can no longer be registered as a town or village green. The amendments seek to remove the three triggers that we think go too far. As hon. Members might imagine, we have come up with a phrase for the schedule: the Secretary of the State has been trigger happy. He has been listing lots and lots of triggers. We think, "Hang on a minute. We want to reduce some of those triggers."

Amendment 98 would remove the publication of a draft development plan as one of the triggers for the same reasons we talked about for clause 12 and now for clause 13. A draft development plan will not necessarily have been through all the processes of consultation. Simply having a draft plan in place should not prevent communities from being able to bring forward an application for a village green. The draft plan should simply highlight to communities that a site may be at risk from development and it will enable them to put their views forward. We think that is much too early in the development process to rule out the opportunity to propose a particular piece of land. Amendment 99 would remove the publication of a draft neighbourhood development plan as a trigger for exactly the same reasons. Amendment 100 would remove an application for development consent as a trigger.

All three amendments relate to events that do not have to be public and to documents that might not have been consulted on. The whole point of consultation over a draft plan or planning application is to ensure that the community is on board and to see if more suitable changes can be made. As such, consultation is an important stage and should not be bypassed by any trigger event.

We all know that the Minister, as I have said, is keen on consultations, particularly those that come late in the day. We do not mind. It is not something I would suggest or write down as good practice to be adopted by Ministers, but if we are to have from the Minister consultations that appear minutes before the Committee sits to consider them, I think he should allow us to make a plea for consultation on such an important set of circumstances, which could reduce the ability of communities to apply for village greens. We want a consultation on the triggers.

We also want to ensure that whatever process we end up with and whatever trigger events are in place to prevent the registration of village greens, there is proper consultation on them through neighbourhood plans, local plans or applications for development consent. The Opposition do not want to deprive communities of the right to submit a village green application in the large number of instances outlined in schedule 4. We know that there is a need to rationalise the process somewhat, but schedule 4 goes much too far in denigrating the rights of local communities.

The three trigger events covered by the amendments are tantamount to saying that consultation, to get development consent through the documents, is nothing more than due process. Otherwise we have no idea why they were included in the list of trigger events. In reality, it is hardly unknown that a piece of land identified for development in a draft plan is removed when the public are able to express their views. Often enough, a replacement piece of land can be identified instead.

I give an example from my constituency; I am sure that other hon. Members have similar examples. It relates to the building of a school in my constituency, which everyone wanted. The county council, unbeknown to anyone, decided that it wanted to build the school not on the site of the existing school, but on a piece of green land in the middle of the village that had served as a leisure and recreation space for as many years as people could remember. The community had not previously applied to have that piece of land included as a village green, because no one ever thought that it would be under any threat whatsoever. In fact, through a period of negotiation that I was involved in, along with local and parish councillors, a residents group was set up to protect the green space and, critically, to identify another more appropriate site where the school could be built. It was possible. It did not really slow down the development of the new school, because all the other meetings and consultations about the new school being built were dealt with at the same time.

It was possible to work with the local authority and eventually, within the time frame that the council had set out, we managed to get the new school on another site that the community was happy with. It was possible to register the village green, and in the process the community decided that it wanted a new children's play area, so we were able to put another group together to work on that.

My point in going through that example is that under the Bill's proposals it simply would not have been possible to go through such a process, because once the county council had applied for development consent, that would have been the end of the process. We had a harmonious outcome that served the needs of the county council and the local community very well. There is simply no need to go down the drastic route that I think the Minister and the Government are suggesting under schedule 4.

We want triggers where the Secretary of State or the local authority can step in if they think that an application is vexatious. There are still five triggers left in schedule 4. However, this is a heartfelt plea from me to the Minister and his team. I do not want communities to find out too late that a bit of land that is really important to them as an open and green space is going to be developed simply because it is in a draft document, and that they are no longer able to go through the registration process either as it exists under current legislation or as is set out with regard to neighbourhood plans.

The triggers have seriously worried many campaigners. The County Durham local access forum wrote to me. We know that the Open Spaces Society is terribly concerned about the inclusion of triggers. Similarly, the Campaign to Protect Rural England, Ramblers, and the Friends of the Lake District all support a smaller set of trigger events. Those organisations are not being hysterical and unreasonable. They have looked at the provisions in the schedule, particularly the large number of trigger events.

The amendment would be a very minor change to the legislation. It would still provide the Secretary of State with lots of circumstances in which he could step in to take a village green out of the registration process. It would ensure that local communities are given time. When they see an important piece of land in a draft development plan or someone seeking development consent on it, they would be able to make their views known and decide whether it is reasonable for them to go ahead and register the piece of land.

Nic Dakin (Scunthorpe) (Lab): It is a pleasure to serve under your chairmanship again, Mr Howarth. It is good to be back for the Committee's final week. I rise to support my hon. Friend the Member for City of Durham, whose arguments are supported by organisations such as the Open Spaces Society, the CPRE and others. At the heart of the clause and the group of amendments is the balance between local community interests and the interests of development, which is always difficult to achieve. My hon. Friend's amendments would help to improve that balance. I want to highlight some of the huge concerns of local groups up and down the country, as well as national organisations representing community and, in particular, rural interests.

9.15 am

Bristol Parks Forum submitted evidence about Whitchurch village green, and how it was registered as a town green after it was shown that it had been used as a right for more than 20 years. It had been earmarked for development, and planning applications were sought. The forum fears that those measures would shift the balance of risk against local organisations and communities holding valued green space.

The National Organisation of Residents Associations said that clauses 11, 12 and 13

"appear to grant rights to landowners designed to reduce the ability of the community to protect its rights over common land."

The rights to such common land go back centuries. It continued:

"Current legislation permits open argument over the rights to use common land, and we fear that these clauses will hazard the use by the community of green open space in their environment."

Those concerns were expressed by groups that are used to defending the interests of local people.

The Woodland Trust said that it

"has grave concerns about the viability of this measure and feels that it will undermine the ability of local communities to protect their green spaces from unwanted developments, including, from our experience valuable ancient woods and important natural habitats."

It is very important that our woodland and green space is protected into the future. It is about getting the balance right; we need development, but we also need protection, and the issue is where the balance is applied. That is why it is important that these words of caution and concern, made up and down the land by groups involved in these activities for many years, are properly listened to and heard at this point in the decision-making process, so that the Minister and his team can reflect hard on whether the balance is correct.

The Wildlife and Countryside Link says that clause 13

"sets out 'trigger events' that can suspend the right to register land as a green. However, almost all of the proposed trigger events are such that the public will not know about them until they have occurred, and it is then too late to submit an application to register a green."

That is the nub of the issue. If designation for development happens without anybody knowing about it, and they only realise the risk to their green and pleasant bits of land at the time of development, there is a risk that we might get the balance wrong. As my hon. Friend said in her example of school development, proper engagement with communities can result in better outcomes not only for communities but for development itself.

Roberta Blackman-Woods: My hon. Friend is making a powerful case on why we must remove these triggers. Does he agree that the timing for the Government's introduction of these measures is completely wrong? Neighbourhood planning has not been rolled out enough or properly resourced across the country for neighbourhoods to know that they can protect and designate green spaces. At the very least, the Government should not be seeking to do this for some years.

Nic Dakin: My hon. Friend is exactly right. As the hon. Member for Halesowen and Rowley Regis pointed out last week, the neighbourhood planning process has the capability and potential to put everything together in a way that will manage the issues appropriately. However, as my hon. Friend has just pointed out, it is immature—it is in its infancy. In certain areas, it is well-developed, but in many others, it is completely underdeveloped and unknown to local communities. We are in a period of transition and change, and that is when risk is greatest.

Dr Thérèse Coffey (Suffolk Coastal) (Con): Does the hon. Gentleman not accept that although neighbourhood planning is new in that it provides statutory powers, such things as village design statements have been in place in many councils for a long time? In those instances, the local situation is already being looked at and designation is suggested, as opposed to overriding the district council?

Nic Dakin: The hon. Lady is right and makes a good point, but if we were to map where village designs are, we would see that in some areas of the country, there are good concentrations of village design in place, while in others, it is less effective. It is patchy, and we should

not imperil communities that have taken areas of green open space for granted for many years. They may not have taken advantage of the opportunities, and they could suddenly find that the designation has changed, only realising when the development is taking place. Such communities should not be penalised; they should be treated equally and fairly. At a point of transition and development, it is particularly important that we strain every sinew to get it right, ensuring that the appropriate protections are in place, so that communities can represent their interests in order to protect their green open spaces, rather than find that they should have done something some years ago, when some of them were not living there and did not know what has happening. They may discover that they have lost an opportunity, because they did not realise that they had it at the time. That is a crucial point.

The Wildlife and Countryside Link concluded on the clause:

"Link believes that this is a far too heavy-handed approach, and one that will kill off genuine applications."

I stress "heavy-handed", and that it will "kill off genuine applications", because that is the real concern. We need to ensure that we do not accidentally create future problems by acting in haste now, because of an urgency of the moment that has been identified, which would imperil green open spaces.

Paul Blomfield (Sheffield Central) (Lab): My hon. Friend makes a strong case, but I want to highlight the reasonableness of many of the organisations that he has cited. Does he agree that it is wrong to categorise the argument as one in which it is said that either no action should be taken, or that the action taken should be what is proposed by the Government? The organisations that have expressed concerns recognise the points that Penfold made, broadly endorsing that approach, but they are concerned that the proposals go too far. Does he agree that if the Government were to rethink the issue and draw up proposals that are much closer to Penfold's recommendations, it would alleviate many of the organisations' concerns?

Nic Dakin: My hon. Friend is right. Such organisations do not want to do battle. By their nature, they are the lifeblood of Great British society; that is where they belong and where they are. They are reasonable and they recognise that the Penfold proposals would do much to reduce—or indeed, eliminate—the opportunity for vexatious applications. I think, however, that the Government are probably overplaying the nature of vexatious applications. Although nobody wants such applications—the Committee is unanimous on that point—it is sometimes in people's interests to exaggerate the threat of certain conditions to rush through changes that we may regret at leisure if we get it wrong. As Andrew Motion pointed out at the weekend, once a green space is built on, it "is gone for ever". I note that the Minister is smiling as I refer to the former poet laureate, who is now doing a very good job as chair of the CPRE.

Let me conclude by reminding hon. Members of the witness evidence that we heard. Ingrid Samuel of the National Trust said:

"One of our concerns is that it is quite difficult to predict the impact of these clauses on public open spaces and towns and village greens."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 20 November 2012; c. 155, Q357.]

This is all about impact. If we get it wrong, those green spaces will be lost for ever—the chair of the CPRE is right. That will not only be to our detriment today, but to the detriment of future generations for ever.

Naomi Luhde-Thompson of Friends of the Earth told us:

"I think it sends the wrong signal. Town and village green spaces are incredibly important to sustainable communities."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 20 November 2012; c. 156, Q357.]

We need to recognise that these are very valuable commodities to communities. They are very important now and will be very important in the future.

Shaun Spiers of the CPRE told us:

"The way the Bill is drafted, however, more or less removes any possibility that anyone would be able to get town and village green status for a site, so it puts the balance far too much against local people trying to protect green space."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 20 November 2012; c. 141, Q320.]

This is all about balance, protection, green space and development. I do not believe that Ministers are trying to get the balance wrong; I do not believe that that is the intention, but often we are caught—bitten—by unintended consequences. The purpose of this debate is to make it clear that we fear such consequences.

Roberta Blackman-Woods: My hon. Friend outlines very clearly for the Committee some of the issues that will arise. Has he noticed that the impact assessment actually allows for unintended consequences? It says:

"Any unintended consequences of the reforms will be monitored through the continuation of the biennial Town and Village Green application activity survey of commons registration authorities."

Does he agree that the unintended consequences are likely to be village greens and open spaces going, which is not acceptable? It is what we are seeking to avoid with the amendments.

Nic Dakin: My hon. Friend is exactly right. They may be unintended consequences, but they are highly predictable. We can see what they will be, and they are things that we would all regret. We should take action now to get the balance right. The leaders of bodies such as the CPRE, the Woodland Trust and the National Trust should not have to say these things. These bodies are concerned to protect our natural assets and they have huge experience and expertise, which we ignore at our peril. They should not have to say, as Mr Spiers said to us, that the Bill's drafting

"puts the balance far too much against local people trying to protect green space."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 20 November 2012; c. 141, Q320.]

Those are important words, and we need to ensure that we get the balance right. Although the monitoring of unintended consequences is to be welcomed, we do not want to find ourselves in the future saying, "I told you so." That is not where we want to be. We want to be in a place where we get the balance right now and we get rid of the vexatious use of town and village green designations. We need to eliminate that, but we also need to get the balance right so that we do not damage our green and pleasant land and our communities in the meantime.

9.30 am

The Minister of State, Department for Business, Innovation and Skills (Michael Fallon): I, too, welcome you back to the Chair, Mr Howarth. You have returned, if I may say so, to hear some pretty wild language this morning. The Government have been accused of being over-zealous, grabbing power and being heavy-handed and trigger happy. Those are just some of the epithets that I noticed. This clause, as I hope I made clear in the clause 12 stand part debate, is about protecting the integrity of the planning system. I remind the Committee that these clauses have the wholehearted support of the Local Government Association. I reassure the Committee that the principle at the heart of clause 13 and supporting schedule 4 is entirely reasonable. Decisions about the future of land—whether land should be developed or kept open—should be taken through the democratically accountable planning system, where all views can be heard and a balanced, sustainable decision can be reached.

We have heard much this morning about the need for the decision to be balanced. The current situation is indefensible. It is not right that, where a community wants to see affordable homes or a new manufacturing facility or a new school and agrees to that, its democratic decision can be blocked by an application to register land as a town or village green. The purpose of our reforms is not to stop all town or village green applications, but simply to stop town or village green applications being used where a planning permission has been granted or where a planning application has been publicised and the decision is still to be made.

Simon Danczuk (Rochdale) (Lab): With respect, the Minister is old enough to remember the memorable speech by the former leader of his party, the previous Conservative Prime Minister, who spoke about warm beer, swallows overhead and cricket on the village green. Does the Minister not feel that this part of the Bill on village greens does not take us back to basics, as that Prime Minister would have wanted, but is a betrayal of the great British people and his predecessors?

Michael Fallon: No. The hon. Gentleman does Sir John Major a disservice. He was a strong upholder and supporter of local government, he served in local government and in his time as Prime Minister he certainly did his bit to protect the local government system, and that is what we are trying to do. These reforms will prevent applications to register land as a green where the land is identified for potential development in local and neighbourhood plans, including draft plans on which the local community is consulted.

We have listened to the concerns of those who think that this issue is a priority, such as the Hastoe Group, which is working hard to provide people with affordable homes, the National Housing Federation and the British Property Federation, which is why organisations as diverse as those groups, and many others too, all underline the urgent need to reform the greens registration process. The Local Government Association said in its briefing note:

"The current financial climate makes the resolution of this issue"—

using greens legislation to block development—

"more urgent than ever as delays can render new local growth initiatives and housing developments unviable, completely stalling such projects."

I agree.

Let me turn in more detail to the Opposition amendments before coming to Government amendment 52. Amendment 96, which was tabled by the hon. Member for City of Durham, would require the Secretary of State to consult whenever he makes an order to change the particular circumstances in which a town or village green application could go ahead, when it would otherwise have been prevented. I appreciate the importance of consultation, but I also believe in avoiding unnecessary bureaucracy and red tape where we can. The amendment would mean that on any occasion, for whatever reason and however trivial the change, the Government would be required to carry out consultation. Consultation is not a cost-free option and at times it simply may not be necessary. We need to be discerning and consult when there is something substantial to consult on. Future Secretaries of State should not be required to consult on something so minor that no one wants to be consulted on it.

Amendments 97 to 100 further complicate the interaction between the two systems—town and village green applications and the planning system—that we are trying to simplify. They would undermine the ability of local communities to support and promote development in their areas through local and neighbourhood plan making. They would put at risk the renewal in infrastructure that we need to support sustainable growth, and I shall explain why.

Amendment 97 would limit the new provisions to areas where there is an adopted local plan or a neighbourhood development plan, meaning that applications to register land as a town or village green could be made while the local or neighbourhood plan was being consulted on. I should remind the Committee that the plan-making process already provides for consultation and should not be undermined by the quite separate process of town and village green registration. I am not sure whether this is the intention of the hon. Member for City of Durham, but decisions about the future use of the land would not then be taken through the plan-making process; they would be decided on the back of an application to register land as a green.

Good progress is being made in local plan making and in the local take-up of neighbourhood planning, but not all places have adopted a local plan. It is for the hon. Lady to explain why people engaged in shaping planning decisions in those areas should be penalised and cut out by the retention of the worst features of the current town and village green application process.

Schedule 4 sets out a number of trigger events, including one at the time a draft plan is publicised, for formal consultation by the local planning authority. That is to allow decisions about the future shape of a community area to be taken through the proper plan-making process. We chose those trigger points at the beginning of the process because that is when local people can make formal representations about whether areas of land should be developed or kept open, taking account of the full range of relevant issues, including by balancing the need for development against environmental concerns. In many cases, communities will have earlier and more informal opportunities to shape the consultation draft.

Decisions on the plan's content will be made in the public interest, having regard to relevant representations and considerations, including national policy and the protection that that gives to open spaces. It will allow for the identification of land that is wanted for development and of land that is not. It would be wrong to allow applications to register land as a green to cut across that process.

Roberta Blackman-Woods: I appreciate that the Minister is outlining the Government's case in some detail, but does he accept our concern that the first time a village or local community know that their green is under threat might be through the lodging of a draft plan or, indeed, of an application for development? Under schedule 4, the community would have to argue with the local authority and the plan makers, through the consultation process, to have that designation for development taken out of the draft plan. In a sense, their hand will be severely weakened in that negotiation process if they cannot register the green or the space for protection. That is what the amendments are designed to address—the fact that they will not be able to negotiate their case.

The Chair: Order. Last week, I said that interventions should be brief and not the occasion for a further speech. I hope that the Committee takes note of that. If Members fail to do so, I will take appropriate action.

Michael Fallon: Thank you, Mr Howarth. I do not doubt the hon. Lady's intention in tabling the amendments. Indeed, we have been discussing how to get the right balance. However, there is an assumption behind what she has just said that the local community is not involved in the planning process. The local community will be involved and consulted as that process is undertaken. The trigger events are in the right place, I think, at the start of the consultation. If we wait until after the planning decision is taken, the green application can be made in the meantime, which would then take years to consider, and even if unsuccessful, it could still delay or block the development.

Let me turn to the detail of amendments 97 to 100. Amendment 97 would mean that the planning process continued to be subservient to the narrower set of considerations that a green application has to be judged against. That cannot be right. We have the same concerns about amendments 98 and 99, which would significantly undermine the benefits of the changes we are making. I find it hard to believe that Opposition Members really intend to undermine the process of community engagement that is at the heart of local plan making, whether the neighbourhood or the local plan, but that is what amendments 98 and 99 could do. They could close down the opportunity for local people to engage meaningfully in local or neighbourhood planning.

Where an application to register land as a green is made in the middle of the consultation on the plan, amendments 98 and 99 would also stop the local community having their say on whether land should be protected from development or whether the community interest is best served by the land being allocated for development. Were the amendments made, land could, in effect, be registered as a town or village green immediately, and there would be no point in asking the community through the plan-making process whether they want the land in question to be developed. The decision would have been made for them through the determination of the application for the green, regardless of the need for affordable housing, new jobs, or a new school, as the hon. Lady suggested. None of those would have been a factor in the decision to register the land as a green.

Amendment 100 would remove the protection from town or village green applications that we intend to give to major infrastructure projects between the time when a proposed infrastructure application is publicised and, following acceptance by the Secretary of State, an application is publicised again. It appears that Opposition Members agree that protection should apply once an accepted application is publicised, and I welcome that, but if we are to provide the infrastructure that a growing economy needs, it is important to keep the initial trigger event that amendment 100 would delete. Encouraging early community engagement in shaping major infrastructure projects is a good thing, but amendment 100 would undermine that, because as soon the infrastructure promoter published the proposed application, the whole project could be put in jeopardy by an application to register the land as a green. That cannot be sensible and developers will not see it as sensible.

Finally, let me respond to some of the points made by the hon. Member for Scunthorpe, who was concerned that the proposals may threaten the protection of green spaces, especially ancient woodlands. Let me emphasise firmly that the reforms do not affect existing greens. Existing registered greens are unaffected. The national planning policy framework gives strong protection to ancient woodlands. We have introduced the new local green space designation to give stronger protection to valued green spaces when plans are prepared. The hon. Gentleman also suggested that the trigger points may not be right, but the Bill contains powers to amend the trigger events if the system is seen not to be working.

The hon. Member for Sheffield Central suggested that the clause ought to be more in line with what Adrian Penfold recommended. However, Adrian Penfold supported these clauses on 20 November when, fairly modestly, he said:

"What is in the Bill is a better way of dealing with it"—

the problem—

"than I came up with."—[Official Report, Growth and Infrastructure Public Bill Committee, 20 November 2012; c. 88, Q209.]

He is supportive of the amendments.

9.45 am

Paul Blomfield: I welcome the opportunity to question the Minister on that point. What would he say to the Open Spaces Society, which concurred with the broad thrust of the Penfold recommendations, but asked for the problem to be addressed by tightening existing regulations and guidance, sifting out poor applications, and introducing time scales, instead of in the way the Government are proposing?

Michael Fallon: I can only repeat what I said a few moments ago on clause 12 stand part. We all want to reduce vexatious applications, but. more important than that, we have to ensure that the application process for registering new greens does not further undermine the existing planning process, which balances the interests

[Michael Fallon]

of the community in development against their interests in preserving their local environment. We must tackle that central problem.

In asking the hon. Member to withdraw amendment 96, I should explain the purpose of Government amendment 52, which is a technical amendment, so I will be brief. On commencement, clause 13 prevents development that is permitted or proposed within the planning system from being stymied because of a new application to register. That is achieved through a series of trigger and terminating events set out in schedule 4, as we have discussed. When a trigger event has occurred, no application may be made in respect of that land. Trigger events have corresponding terminating events, which provide that a town or village green application can again be made. To provide future flexibility, the clause also enables the Secretary of State by order to add to or amend the schedule. This minor technical amendment is required to ensure that when a new trigger or terminating event is added by order, we can make provision for events that took place before the order came into force to have effect. The aim is to ensure that if, for example, additional terminating events are needed, the registration of land as a green will still be possible when there is no longer any development permitted or proposed on it.

If Opposition Members do not agree with me about the other amendments, I hope that they will see the sense in Government amendment 52, which is a technical improvement.

Roberta Blackman-Woods: I am not sure that I consider Government amendment 52 to be minor and technical if it allows the Secretary of State to add to the trigger events, but as I understand "by order", there will be an opportunity for Parliament to scrutinise such measures later.

I am disappointed with the Minister's response to the amendments. The Government's argument is particularly weak, because it appears to come down to the fact that because there may consultation on a local plan or neighbourhood plan, or because there is a period for communities to comment on a development application, there cannot be a simultaneous discussion about the registration of a village green. That seems bizarre and wholly remote from what would happen in reality. The suggestion that up and down the country, greens are being registered willy-nilly without the local community knowing anything about it is frankly ridiculous.

For the sake of protecting communities and their greens, I urge the Minister to take the matter away and to think about it again. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 52, in clause 13, page 15, line 34, at end insert—

'( ) The transitional provision that may be included in an order under subsection (5)(a) specifying an additional trigger or terminating event includes provision for this section to apply where such an event has occurred before the order is made or before it comes into force and as to its application in such a case.'.—*(Michael Fallon.)*

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

Roberta Blackman-Woods: Although we have discussed the clause quite a lot already, I want to make a few comments on clause stand part. The Committee can see from the amendments tabled so far that it is our view that the Minister's Department has perhaps gone too far. He seems to have assumed that all town and village green applications are submitted to stop development. Although we have queries about the impact assessment, it nevertheless sets out the clear case that about 30% to 50% of applications are submitted as a result of a planning application and that 5% to 15% are in areas already covered by a local plan. Even if we assumed, perhaps incorrectly, that none of the applications submitted in response to the planning application was in an area covered by a local plan, about 30% of applications for town and village green status would still be considered genuine but would be ruled out under this set of circumstances.

I remind the Minister that town and village greens are not necessarily the enemy of enterprise that they are being presented as in this Committee. Many people really treasure their local green and want to keep it there for future generations to enjoy. In fact, town and village greens can be hugely beneficial. Friends of the Earth said:

"Town and village greens are important components of sustainable communities. Exemplary 'green' developments particularly in Freiburg (Germany), include shared green space for a given number of properties to include wildlife, play and recreational space."

That type of thinking is not reflected in the Government's comments.

Andrew Stunell (Hazel Grove) (LD): Does the hon. Lady not agree that she could substitute "town and village greens" with the words "local green space" which is the provision in the Localism Act 2011 and which would allow her people who thought that they had just discovered such a space to register it via the procedure in the Localism Act? It is extremely difficult to understand what she is saying by way of distinguishing those two cases. Is not it simply a matter of tidying up and providing a much better procedure through the Localism Act?

Roberta Blackman-Woods: If the right hon. Gentleman had been listening earlier, he would have known that I dealt with that point. Indeed if the neighbourhood planning process was rolled out right across the country, if that had been happening for a number of years and if it had been properly resourced or was to be properly resourced in the future, then he might have a case; we have already conceded that. The point is that, in the real world, neighbourhood planning has not been rolled out uniformly and is not adequately resourced, so at this point in time, it cannot be used as a reason to remove the important protections for communities that are there at the moment. The Minister may shake his head, but I look forward to writing to him with the first case, because, at some stage in the future, we will find that we do not have time to put in place a neighbourhood plan before a green space is threatened.

This is what we know: in its report, Friends of the Earth says that

"There has been a reported loss in almost all the authorities surveyed in the report of green space in urban areas. More of these spaces should be created rather than less, and local authorities

should ensure that protected green spaces are an integral part of their local plans and of any new development over a certain size. Green space is also vital for adaptation and for the enhancement of biodiversity.''

I urge the Minister to look at what has been said by CPRE and others about using a sledgehammer to crack a nut. We know that greens have benefits.

I should like to raise some questions about how the impact of the clause has been assessed. There is no reference in the impact assessment of the value to public health or well-being of having access to green space. The Minister might say that that is too abstract for an impact assessment—a Government document—but I contend that it is no more abstract than calculating the benefits that will accrue as the result of developing village greens, especially when the Government simply have not considered the downside of such a designation. For example, the impact assessment cites the

"avoidance of land value depreciation"

as a substantial side effect, but the problem is not that the land would otherwise depreciate, but that it will appreciate if planning permission is granted. The two are very different, but are not separated in the impact assessment.

Furthermore, due to other reforms the Minister is pushing—particularly the removal of affordable housing developments in 106 agreements for development in particular circumstances—benefits to the local community in terms of affordable housing are likely to reduce further. The way in which the clause and particularly the schedule are constructed is most unfortunate. The impact assessment has not given the Committee the full information it needs to assess the advantages and disadvantages of the clause and schedule. I urge him to look again at the issue.

Nic Dakin: I rise to emphasise one or two key points that have already been touched upon. It is worth noting that the Commons Act 2006, including section 15, which put in place the town and village green designation, had all-party support in the House of Commons. We need to be careful about changing it in a way that does not maintain that all-party support. It is clear in the debate that there is all-party support for tackling vexatious applications. There have been comments about the number of vexatious applications, but we have not been presented with any analysis.

Town and village green designation is a tough process. People may have a genuine desire for town and village greens, but an application can fail due to one aspect, which is right and proper. Failure to achieve designation does not mean that a claim is vexatious or spurious. A genuine attempt at designation may not meet the criteria when properly applied. We have had a lot of assertion, but little analysis. I fear that what is being put in place, as presented in the evidence of many groups used to working with community groups, is a sledgehammer to crack a nut. The measure does not need to be as substantial as this, and we will rue its impact at our leisure. It risks impacting not only on us, but on future generations.

I wish to return to local authorities that own land they wish to develop, which puts them in a difficult position, as it always has. They must ensure that communities are properly consulted and concerns examined. In my constituency, the local authority has been a bit free and easy in how it has treated Ashby pond—an area of natural beauty used for many generations. Town and village green designation provides an additional process that gives a level of protection and challenge to local authorities in such circumstances. I recognise what has been said about the development of the local and neighbourhood planning framework. That should give us the protections we seek when it is mature, but it is not mature at this point. Moving forward too briskly on this may create problems that we regret.

10 am

Bob Blackman (Harrow East) (Con): I rise to make a brief contribution, given your strictures on interventions, Mr Howarth.

In evidence, we heard about a number of cases in which people had sought to use the process we are debating to frustrate development the wider community wanted. I therefore applaud the clause for doing away with restrictions that allow people vexatiously to frustrate development.

While I strongly support the clause, however, I have one concern about the table, which I hope the Minister can deal with. As the hon. Member for Scunthorpe said, the local authority may be the landowner and may also wish to develop the land. Under the provisions in the table, a draft development plan could be published, acting as a trigger event that would frustrate any individual who wanted to register the land as a town or village green.

I can give two examples to highlight my concern: one is from my constituency, and the other is from close to where I live. In my constituency, the local authority has chosen to turn a green space that is widely used by the community into a leisure centre. The centre will be run by a private operator, which will restrict access to the green space for absolutely everyone, charging them for the privilege of using it and frustrating a number of local groups. Under the Bill, no one would be able to register that green space as a town or village green, although people are currently going through that process. My concern is that if the local authority decides in future to publish a potential development plan for a number of years ahead, that will frustrate local people's ability to gain access to such local areas.

The other example, which I know only too well, is Northwick Park golf course, where a right of way had existed for many years. Local campaigners used the process we are discussing in an attempt to frustrate the setting up of the golf course. Fortunately, through a negotiated arrangement, the right of way was moved. As a result, there was still a right of way, and people still had access to the green space—it was just not the exact green space they originally had. The process dealt with in the clause therefore frustrated that development at the point when it was being decided whether to register it, temporarily preventing a wholesale development that was to the broader benefit of the whole community.

My concern is that when a local authority owns and controls land on behalf of local people, and someone in one of its departments decides to develop the land for leisure, housing or other purposes, that can trigger an event that would prevent local people from being able to register the land for the use they may have made of it for many years.

[Bob Blackman]

I therefore ask that we examine what should happen in such cases to ensure that local people have the opportunity to register land for the uses they have made of it over many years, so that they are not suddenly told in a bureaucratic way, "We're very sorry, but you can no longer register this land for your use because the local authority has decided that it is going ahead with some form of development." I trust that the Minister can answer that point in his speech.

Michael Fallon: May I turn first to the principles behind the clause, and then try to answer some of the specific questions that have been put to me?

The first suggestion is that the Government have somehow cooked up the clause in a hurry to accelerate growth—that is was put together in a rush over the summer. Let me make it clear that the provisions in this and the previous clause are the culmination of several years of consideration and consultation, both under this Government and our predecessor. They were informed by research commissioned by the previous Government, the findings of the Penfold review—also initiated by the previous Government—and by responses to an extensive consultation last year on the options for reforming the registration process. All of that has highlighted the confusion, frustration and unnecessary costs that arise when a decision to develop land through the planning system is second-guessed by an application to register land as a green.

Planning decisions about whether land should be developed or left open are made only after very careful consideration of relevant factors and of the wider public interest. Decisions to develop land through the democratically accountable planning system should not be undermined, and proposed new section 15C of the Commons Act 2006 will ensure that the planning process can take its course without applications for new greens cutting across it. That will remove the uncertainty and delays that are difficult for those in the community who are affected, and it will reduce the financial burden on local authorities in considering applications.

As we have already established, the provisions will prevent new applications to register land as a green where planning permission has already been granted or where a planning application has been publicised and the decision is still to be made. Similar provisions will apply in relation to applications for consent for nationally significant infrastructure projects under the regime provided by the Planning Act 2008. Applications to register land as a green will also be prevented where the land has been identified for potential development in a local plan or a neighbourhood plan, including draft plans that have been formally published for consultation by the local planning authority. I think that the Committee is now clear about the effect of the clause, even if some its members still have reservations about how the clause will operate.

The hon. Member for City of Durham asked me about wider considerations that were not included in the impact assessment on the Bill. They were addressed in the fuller impact assessment of village green reform. If she turns to annex C of that document—page 33—she will see a full analysis of the wider benefits under the categories of health, which was one of her specific concerns, and biodiversity, air quality and non-use benefits.

The hon. Lady suggested that neighbourhood planning is not properly resourced. I have to tell her that real progress is being made. We have some 50 neighbourhood plans that will be in train or being examined by next spring. The whole point of the clause is that that process should not be undermined or cut across by applications for green.

My hon. Friend the Member for Harrow East returned to the issue of land owned by local authorities. A local authority is treated exactly the same as any other landowner. In the cases to which he referred, there would have been full public consultation, even though, as I accept, in the latter case that was some years earlier. I do not want to comment on the two specific cases, because it would not be right to do so, but I am happy to put in writing a reassurance about how the clause will deal with land owned by a local authority.

Finally, with the best of intentions, the hon. Member for Scunthorpe came to the crux of the matter, because he sees applications to register town and village greens as an additional protection—those were his words—against local authorities. I suggest that that rather gives the game away. He does not trust the local democratic decision-making process, in which there is consultation and the various interests of the environment and development—for example, whether a new school should be provided—are balanced by democratically elected councillors going through the full consultation process. That is the issue that the Committee now has to determine, when coming to a decision on the clause.

Question put and agreed to.

Clause 13, as amended, accordingly ordered to stand part of the Bill.

Schedule 4

NEW SCHEDULE 1A TO THE COMMONS ACT 2006

Question put, That the schedule be the Fourth schedule to the Bill.

The Committee divided: Ayes 10, Noes 6.

Division No. 7]

AYES

Blackman, Bob	Glen, John
Boles, Nick	Howell, John
Bradley, Karen	Morris, James
Coffey, Dr Thérèse	Simpson, David
Fallon, rh Michael	Stunell, rh Andrew

NOES

Blackman-Woods, Roberta	Danczuk, Simon
Blomfield, Paul	Glindon, Mrs Mary
Dakin, Nic	Murray, Ian

Question accordingly agreed to.

Schedule 4 agreed to.

Clause 14

APPLICATIONS TO AMEND REGISTERS: MODIFCATION OF POWER TO PROVIDE FOR FEES

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

Roberta Blackman-Woods: I want to take the opportunity to ask the Minister some questions about the clause because, at present, it is not entirely clear what it could

mean for local people and local communities. The clause seems to allow the Secretary of State to make regulations, which presumably will be debated by the House at some stage, for fees payable in relation to an application and, in particular, make provision for a fee payable to be determined by the person to whom an application is made or, if different, the body by which the application is to be determined.

The explanatory notes state that such measures are to allow for greater flexibility and the targeting of fees. That might indeed be the case, but the LGA says that it is

"helpful that the Bill will enable a fee to be charged locally. This should be levied at a rate that is still feasible for local groups and looks to cover only the costs".

It again makes the point that matters should be determined at local level. The problem is that the LGA then cites a case when it cost a local authority £32,000 in legal fees to consider one village green application alone. While that might be an exception, it raises several issues to which I want the Minister's response.

Will the more flexible fee that will be levied include paying the legal costs for the local authority, the Commons Registration Authority or the Planning Inspectorate if the case were referred to them? I ask that, particularly, in relation to the fees being levied against a local community organisation or someone seeking to register the land. If so, is it likely to be a significant deterrent to the registration of village greens even when the claim is considered to be entirely legitimate, and not vexatious in any way?

While the LGA states that the fee

"should be levied at a rate that is still feasible for local groups",

I can see nothing in the clause that will limit the fee to something that would be considered reasonable. Indeed, there is nothing to suggest what "reasonable" might be in this set of circumstances.

10.15 am

I know that the Government have bandied about a fee of £1,000 or thereabouts for registering a village green. We are entirely unclear as to whether that is the sort of sum they have in mind in these circumstances. Such a sum may seem reasonable to many, but in constituencies such as mine it is quite a large sum for many local groups to find, particularly in a short space of time.

Clearly, having a numerical limit in the Bill is very difficult. Consequently, can the Minister confirm that the regulations, when they are introduced, will contain a limit and some idea of how reasonableness will be determined? Will they allow a claim for the costs of the local authority or the registration authority to be made only where the claim for the registration of land is seen to be vexatious, or will a claim be allowed in more general circumstances?

Furthermore, will the Minister consider what might be done to encourage local communities to use neighbourhood planning to designate green spaces? That is mentioned as a potential benefit in the impact assessment, but how it will be achieved is not clearly spelled out. I heard the comments made earlier by the Minister and the right hon. Member for Hazel Grove, but I am afraid that the experience on the ground is that a number of communities do not have the resources at present to undertake a neighbourhood plan, and I am terribly concerned that clauses 12 to 14 rather suggest, and are based on, what I think is the quite wrong view of the Government that neighbourhood planning is happening in all our communities.

Nic Dakin: My hon. Friend is spelling things out very clearly. Does she agree that some communities are fortunate to have greater human resource capacity as well as greater financial capacity to connect with local planning, whereas other communities are not that fortunate? There is a key issue about how we equalise the capacity across all communities, which I have not yet seen being addressed.

Roberta Blackman-Woods: My hon. Friend makes an excellent point, and indeed it is coming up in the early stages of the evaluation of the neighbourhood planning process that not all communities are equally able to undertake neighbourhood planning. It is actually the most disadvantaged areas of the country that are losing out yet again; those are exactly the areas that need additional resources to help them to undertake neighbourhood planning, but those resources are not forthcoming.

I would be very grateful if the Minister could address the fees issues and the whole neighbourhood planning issue in his response to the debate.

Michael Fallon: Perhaps I could set out the purpose of the clause, before turning to the specific and perfectly fair questions that the hon. Lady has asked.

Clause 14 replaces the power in section 24(2)(d) of the Commons Act 2006 to charge fees for applications made under part 1 of the Act to amend the registers of common land or town and village green, with a revised power that applies in England. The power as it applies to Wales is restated, but is unchanged.

This revised power allows the Secretary of State to make provision in regulations for fees payable in relation to an application. The aim of the clause is to allow for greater flexibility and targeting of fees for applications to amend the registers under part 1 of the Bill. That would be subject to secondary legislation and therefore, of course, to parliamentary scrutiny.

The powers will ensure that the Government can prescribe in regulations for more than one fee to be charged during the application process, for example at different stages of the application. The clause also makes provision for a fee payable to be determined by the person to whom an application is made or, if it is different, by the body that will determine the application.

This type of situation, whereby the commons registration authority receives an application, but the Planning Inspectorate determines it, presently happens in seven commons registration authority areas that have pioneered the implementation of part 1 of the Commons Act 2006 under the Commons Registration (England) Regulations 2008. At the moment, only the commons registration authority has the power to charge a fee.

In the pioneer areas, an application must be referred to the Planning Inspectorate where

"the registration authority has an interest in the outcome of the application".

It is not uncommon for town and village green applications to relate to land owned or managed by the commons registration authority itself. However, under the current legislation, the Planning Inspectorate cannot charge a fee to recover any cost for determining the application

[Michael Fallon]

in those circumstances. The new powers would allow for the commons registration authority to charge for its component of the work, and the Planning Inspectorate could do the same.

The conflict of interest scenario could conceivably apply to any application under part 1. Furthermore, applications must also be referred to the Planning Inspectorate where they would correct a mistake in the register to add land to or remove it from the register, or to correct the details of a right of common in a register. So this is not just about greater flexibility to charge for town and village green applications; it is an issue for any application to amend the registers under part 1 of the 2006 Act.

The Department for Environment, Food and Rural Affairs 2011 consultation on town and village green reform proposed setting fees for applications. The clause makes existing fee-making powers more flexible if we decide later that fees are appropriate. However, the Bill does not set fees—that would be done later through regulations. Any fee that is set would need to be fair and to balance recovery of costs by registration authorities against the impact on applicants for registration.

In answer to the hon. Lady's second point, we have not yet taken a decision as to whether the costs involved should be capped and whether there should be a limit to the fee. I am happy to take into account what she has said on that. Any fee that is set will need to be fair to all sides in the measurement of that particular impact.

The hon. Lady asked whether the legal costs were included in the fees to be set, and, if they were, whether they would be a deterrent to applicants. Nobody wants to discourage proper applications under this process. I will get back to her, if I may, on that point. She also asked whether costs would be recovered only in cases that are vexatious. It is my understanding that that is not the case. Again, if I am wrong, perhaps I could advise her in writing. I beg to move that the clause stand part of the Bill.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15 ordered to stand part of the Bill.

Clause 16

Conditions of licences under Gas Act 1986: payments to other licence-holders

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

Michael Fallon: As no amendments have been tabled, I would not want the importance of the clause to go unremarked.

The Gas Act 1986 provides the basis for regulating the British gas market. Clause 16 amends the Gas Act in order to clarify that licences granted by the regulator to gas network companies may contain a requirement for them to increase their charges and transfer the monies raised to other licensed gas companies, including network companies. The law as currently drafted could be interpreted in different ways. This amending clause puts the issue beyond doubt.

The current regulatory uncertainty is preventing Ofgem, the regulator, from launching its gas network innovation competition, as the funding for that competition relies on Ofgem requiring gas network companies to raise and transfer monies to network companies that are successful in the competition.

The gas network innovation competition will see some £160 million invested by gas network companies into the gas infrastructure to improve the efficiency of the grid and to promote innovation. Greater efficiency and innovation in our gas networks will put downward pressure on consumer bills, support our decarbonisation agenda and help the networks adapt to meet challenges in the security of supply. Once the clarification takes effect, Ofgem will be able to put in place the licence conditions required to establish the network innovation competition, following its normal statutory process.

The clause is important, and I hope that the Committee will allow it to stand part of the Bill.

Roberta Blackman-Woods: I do not have many comments on the clause. We accept that clauses 15 to 18 are pretty much technical provisions that tidy up existing legislation, which should lead to greater transparency in the future.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

Variation of consents under Electricity Act 1989

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

Michael Fallon: Clause 17 will amend the provisions in the Electricity Act 1989 relating to consents for generating stations and overhead lines. In particular, it will allow developers to apply for amendments to consents for electricity generating stations issued under the Electricity Act regime, which preceded the Planning Act 2008.

When a developer has a consent for a generating station under section 36 of the Electricity Act, it may be several years before it is in a position to commence development. Within that time, technologies may have advanced—for example, turbine efficiency may have improved—and, as a consequence, the developer may wish to make improvements to its project. However, the original consent may not allow such improvements, because it specifies that the development has to be carried out in a certain way. The Electricity Act does not provide for consents issued under section 36 to be varied. Therefore, developers in such a situation would have to make a completely new planning application to the Planning Inspectorate under the Planning Act 2008; build a sub-optimal development; or, in the worst case, simply abandon the development completely.

The Government do not believe that it is right that a developer should have to make a completely new application, covering every aspect of the project in detail, when only part of the project is to be changed. That is unnecessary red-tape. The potential delay and additional expense are in no one's interest. We believe that the planning system should require a proportionate amount of information from developers in relation to their proposals, and the clause will allow developers to focus on the part of the consent that they want changed.

I assure the Committee that it is not our intention that such changes should simply be rubber-stamped. There will be a public consultation period, and the views of interested parties will still be considered as part of the assessment of the developers' proposed change. The decision maker, who, depending on the situation, may be the Secretary of State, Scottish Ministers or the Marine Management Organisation, will then reach a reasoned conclusion.

The clause will insert new section 36C into the Electricity Act 1989. The new section will set out the basic proposition that section 36 consents may in future be varied following an application from a developer and provide that the procedure for dealing with applications to vary section 36 consents may be set out in regulations.

The clause will also allow regulations to make provisions that applications to vary consents and any variation to a consent should be treated as though they were made when the original consent was made. That will enable regulations to tie in the variation of section 36 consents with the current provisions of secondary legislation made under the Planning Act, to clarify that the Planning Act is not required for the revised project. For the same reason, the clause will allow regulations for variations to consents for overhead lines to be treated as though they were made at the same time as the original consent.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18 ordered to stand part of the Bill.

Clause 19

Special parliamentary procedure in cases under the Planning Act 2008

10.30 am

The Parliamentary Under-Secretary of State for Communities and Local Government (Nick Boles): I beg to move amendment 79, in clause 19, page 20, line 10, leave out '(3)(a)' and insert '(3)'.

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

Government amendments 80 to 83.

Government new clause 3—*Removal of Planning Act 2008 consent and certification requirements.*

Nick Boles: Once again, it is a pleasure to serve under your chairmanship, Mr Howarth. The group of amendments will expand the one-stop-shop approach to consents for nationally significant infrastructure projects and ensure that the application of special parliamentary procedure applies in the way originally intended.

Clauses 19 and 20 fulfil the Government's commitment to reform special parliamentary procedure. Clause 19, to which the amendments would be made, limits the use of the special parliamentary procedure, which requires further scrutiny by Parliament of decisions on the compulsory acquisition of special land, where it is not considered that it is necessary, or where there are good reasons for it not to take place.

As part of the Prime Minister's housing and planning growth announcement on 6 September, the Government set out their intention to expand the one-stop-shop approach for consents for nationally significant infrastructure projects. On 26 November, I published a consultation setting out our proposals for delivering that, while also giving notice to bring forward the new clause and the supporting amendments to the Bill.

Getting the infrastructure that this country needs delivered as quickly and efficiently as possible is absolutely crucial to the Government's commitment to creating the conditions for sustainable long-term growth. As part of that commitment, we need to ensure that the development consent regime for crucial infrastructure projects works as smoothly and efficiently as possible. Wherever we can, we will remove the bureaucracy and barriers that stand in the way of growth.

The group of amendments removes a number of separate certification and consent processes currently set out in primary legislation. The amendments remove the requirements for additional consents and certificates to be issued set out in sections 127, 131, 132, 137 and 138 of the Planning Act 2008. Sections 127, 131, 132 and 138 all relate to certificates or consents required from the Secretary of State. Section 137 is different. It applies to consents issued by statutory undertakers and communications code operators affected by the development consent order in certain circumstances.

The development consent order process offers ample opportunity for these issues currently considered and certified separately to be dealt with effectively. The examining authority and the Secretary of State taking the decision on the development consent order will still have to consider the material issues and will have to set out in the order that he is content that any of the relevant tests set out in legislation—for example, that rights can be purchased without serious detriment to the carrying on of the undertaking—have been met. However, the requirement for an additional certificate or consent—another piece of paper to add to the pile—will no longer be needed, providing a streamlined, more efficient process.

If the Secretary of State is minded to issue a certificate under sections 131 or 132, disapplying the requirement for special parliamentary procedure where an order authorises the acquisition of commons, open space or fuel or field garden allotments, he is required to go through a number of unnecessary procedural requirements. However, it is important to emphasise that the main examination process will still allow interested parties to make representations about these matters, for example, regarding the adequacy of exchange land where common land is acquired. I therefore consider those additional procedures to be duplicative and burdensome.

In addition, in respect of the changes to section 137 of the Planning Act 2008, statutory undertakers and other bodies potentially affected will be able to make representations as part of the examination process. Their representations are already taken into account by the examining authority and the Secretary of State when considering the development consent order. Additional protections offered through this additional bureaucratic process are unnecessary, given the ample opportunity provided for affected bodies to make representations through the development consent order process.

Therefore, I commend amendment 79 and ask for the Committee's support when we are asked to add the other amendments in this group and new clause 3 to the Bill.

Roberta Blackman-Woods: It is not my intention to speak against the amendments, but the Committee should note that the unnecessary procedural requirements, as the Minister chooses to characterise them, are often there for the protection of important open spaces. I accept, however, that some streamlining is necessary regarding special parliamentary procedure. With the Minister's assurance that representations from statutory undertakers can still be made during the process, the Opposition can accept the amendments.

Amendment 79 agreed to.

Amendments made: 80, in clause 19, page 20, leave out line 12 and insert 'the words from "unless" to the end substitute "unless—

(a) the Secretary of State is satisfied that one of subsections (4) to (5) applies, and

(b) that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.",'.

Amendment 81, in clause 19, page 20, line 34, at end insert ', and

(c) omit subsections (6) to (10) (provision about certificates under subsection (3)(b)).'.

Amendment 82, in clause 19, page 20, line 38, leave out from second 'allotment' to 'after' in line 39 and insert ')—

(a) in subsection (2) (special parliamentary procedure does not apply if Secretary of State certifies that one of subsections (3) to (5) applies) for the words from "unless" to the end substitute "unless—

(a) the Secretary of State is satisfied that one of subsections (3) to (5) applies, and

(b) that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.",

(b) '.

Amendment 83, in clause 19, page 21, line 10, at end insert ', and

(c) omit subsections (6) to (10) (provision about certificates under subsection (2)(b)).'.—*(Nick Boles.)*

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

Roberta Blackman-Woods: I want to ask the Minister a few questions. I am sure he will accept that we are discussing a particularly difficult and dense set of clauses, and I want to be absolutely certain about the Government's intentions.

Special parliamentary procedure means that when land of a specific type is compulsorily purchased as a result of a development consent order, the case has to be heard in Parliament. Clause 19 repeals the current provision for certain types of land to be protected by special parliamentary procedure, by allowing the Secretary of State to issue a certificate disapplying such procedure in cases concerning open spaces and land to be compulsorily purchased by a specified body. On Second Reading, the Secretary of State said that that was necessary due to the "poor drafting" of the Planning Act 2008. Indeed, from what the Minister said earlier, it would appear that poor drafting is part of the reason for bringing amendments forward, but streamlining is perhaps most pressing in the Government's mind. The United Kingdom Major Ports Group noted in its written evidence:

"It is unlikely that the retention of special parliamentary procedure in the 2008 Act was as a result of 'poor drafting'. If that were the case the Government has since had ample opportunity to correct such 'poor drafting', for example, through the Localism Act 2011. It is far more likely that the draftsman of the 2008 Act recognised, as did the Government of the day, the vital importance of land belonging to statutory undertakers and that such land should not lightly be removed".

Special parliamentary procedure was brought in to show the value of open land, but that is not to say that the process has no issues. We know the problems faced by the Rookery South project in Bedfordshire, where it took many months for a Committee to be formed for the special parliamentary procedure to get under way. Has the Minister's Department considered any steps to improve the efficiency of special parliamentary procedure, rather than watering it down? Also on "poor drafting," can the Minister explain what is meant in proposed new section 131(4B) of the 2008 Act, as set out in clause 19(2), by acquisition

"for a temporary (although possibly long-lived) purpose"?

The meaning of that is not clear to us.

Will the Minister answer the question posed in the evidence from the National Infrastructure Planning Association on why the Bill does not go further? NIPA, in contrast to other organisations, said:

"We feel…the Bill does not go far enough, in that clause 19 should also remove altogether the prospect of the special parliamentary procedure applying in a case involving the acquisition of open space, as distinct from National Trust land, commons and allotments. Open space can be any land that is used as a matter of fact for public recreation. It does not have to be publicly owned, and in my experience, it comes up a lot with linear infrastructure projects."—[*Official Report, Growth and Infrastructure Public Bill Committee,* 20 November 2012; c. 116, Q268.]

To what extent does the Minister feel that open space, defined in section 19 of the Acquisition of Land Act 1981 as

"any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground",

is a useful designation? Perhaps such drafting leads a number of organisations, including the Royal Society for the Protection of Birds, to think that the clause, as currently structured, is too complicated and would best be deleted, with the whole process being outlined again elsewhere in a more straightforward manner.

On Second Reading, the Secretary of State said that the Bill retains

"safeguards for land with genuinely "special" historic and parliamentary protection".—[*Official Report*, 5 November 2012; Vol. 552, c. 602.]

I assume that is why National Trust land, commons and allotments are exempt.

Bearing in mind NIPA's comments, will the Minister confirm whether his Department has decided that general open space is not genuinely important and that, in reality, it would like to remove all open space protection in favour of other protections such as designation as a local green space? Or does the Minister still believe that open space designation under special parliamentary procedure has some importance? If so, will he explain in what way and in what circumstances the designation is still held to be a valuable tool?

There is concern that removing the special parliamentary procedure for open space will remove an incentive for developers to provide replacement open space. What steps has the Minister taken to ensure that that is not the case? The Open Spaces Society has said:

"Ministers must be required to provide good examples of why this change is needed in the public interest."

I totally agree.

Nick Boles: If you will forgive me, Mr Howarth, I am going to speak at some length, because, as the hon. Lady has pointed out, this is a complicated provision that addresses quite a complicated inherited position. It might assist the Committee, and indeed myself, if I talk through the clause in some detail to ensure that we are no longer as confused as perhaps we, and certainly I, have sometimes been.

Clause 19 amends the provisions in the 2008 Act on the circumstances in which the special parliamentary procedure will apply. The development of world-class infrastructure is vital to the economic vitality of this country and can create thousands of new jobs and billions of pounds of new investment, so consents for infrastructure need to be provided quickly and efficiently.

The 2008 Act brought together a range of consent regimes for major infrastructure into a single development consent order that includes any decisions on the compulsory acquisition of land. But where certain categories of specially protected land are acquired, special parliamentary procedures may be triggered.

10.45 am

Under the special parliamentary procedure, the decision on whether such land may be compulsorily acquired under an infrastructure consent is transferred to a Committee of MPs and peers for further examination. While the SPP process is undertaken, the development consent cannot come into effect and work on the infrastructure project cannot start. The Government believe there is a strong argument for the special parliamentary procedure to be limited to situations where there is a real need for further scrutiny by Parliament: for example, where there is a genuine need to weigh up the public interests of allowing infrastructure development to take place at the expense of the loss of certain types of very specially protected land. However, in the one case so far where the special parliamentary procedure has been triggered for an infrastructure project under the Planning Act, the project had already been delayed by over a year since the initial consent was issued. We do not consider such delays to be acceptable given the importance of new infrastructure to growth.

Clause 19 therefore seeks to limit the circumstances in which the special parliamentary process would apply to infrastructure projects under the Planning Act. First, it repeals sections 128 and 129 of the Planning Act. That would remove the requirement for the SPP in cases where land belonging to a local authority, or acquired by a statutory undertaker for purposes of their undertaking, is compulsorily acquired, and a representation made against the acquisition by the local authority or undertaker is not withdrawn. That would bring the Planning Act in line with similar consenting legislation for infrastructure such as the Transport and Works Act 1992.

I should stress that that does not mean that land of that type will be compulsorily acquired without any opportunity for local authorities or statutory undertakers to present a case against acquisition. First, anyone can make representations regarding the proposed acquisition of land. Furthermore, existing provisions for hearings on the acquisition as part of the public examination of the infrastructure project are unchanged. Those with an interest in the land being acquired will still be able to require that a hearing is held and make representations regarding the acquisition, which will be taken into account in the recommendations made to the Secretary of State and in his subsequent decision. The requirement under section 122 of the Planning Act for a compelling public interest for the land to be compulsorily acquired will remain unchanged.

Clause 19 inserts new subsections into sections 131 and 132 of the Planning Act. Section 131 sets out the circumstances in which the Secretary of State can issue a certificate so that, in a particular case, the compulsory acquisition of commons, open spaces and what are known as "fuel and field garden allotments" do not trigger the special parliamentary procedure. Currently, such certificates can be issued in very limited circumstances. Section 132 covers the issuing of certificates where the compulsory acquisition is of rights over commons, open space and allotments.

Two new circumstances in which the Secretary of State may issue such certificates are proposed in new subsections (4A) and (4B) to section 131 of the Planning Act. These relate only to open space. New subsection (4A) allows the Secretary of State to issue a certificate where open space is compulsorily acquired and suitable exchange land for the land being acquired is not available, or only available at prohibitive cost. In such cases, a certificate could be issued if it is strongly—I emphasise strongly—in the public interest for the development to start sooner than would be the case if it were subject to the special parliamentary procedure.

New subsection (4B) allows the Secretary of State to issue a certificate where open space is compulsorily acquired for a temporary, although possibly long-lived, purpose. The hon. Member for City of Durham made a reference to this slightly curious concept, and I accept that there may appear to by oxymoron, but I think she will understand that "temporary" means that it is not for ever. There is a limit to the time, but it is not necessarily just a matter of months; the time could be reasonably extended, although it will not be permanent. That is what we are trying to clarify, but I understand that she may not be entirely satisfied by that explanation. As such purposes could vary considerably depending on the project concerned, we have not attempted to specify a time period for any temporary need of open space.

Two new sub-sections are also added to section 132 of the Planning Act, which covers compulsory acquisition of rights over special land. These subsections replicate those added to section 131. New subsection (4A) allows the Secretary of State to issue a certificate where no suitable land is available to be given in exchange for the acquisition of a right over open space, or is available only at prohibitive cost. Again, this would be subject to a test that it must be strongly in the public interest for

the certificate to be issued. Subsection (4B) allows a certificate to be granted where a right over open space land is to be acquired only on a temporary basis.

I stress again that we are not removing all opportunity for people to make representations on the compulsory acquisition of special land. Such representations will continue to be considered as part of the examination of an infrastructure project and in Ministers' decisions on consents. The proposals set out in clause 19 will ensure that essential infrastructure projects are not delayed unnecessarily by the need for special parliamentary procedure. Our proposals strike a fair balance between the need for protection of certain types of land and the need for new infrastructure to support growth.

Roberta Blackman-Woods: Will the Minister give way?

Nick Boles: I will try to deal with some of the questions that the hon. Lady has raised, but I am happy to give way to her if she wants to pose further questions.

Roberta Blackman-Woods: The Minister's comments are very helpful in helping us to understand why this clause has been included in the Bill. Could he also help the Committee by informing us of the way in which the phrase, "strongly in the public interest", will be assessed and whether that has already been set out in the legislation or whether the Government intend to do so in the future?

Nick Boles: I thank the hon. Lady for that question. May I return to it in a moment? I would just like to deal with a couple of the questions that she raised previously. She made the point that the Secretary of State had referred to poor drafting as one of the motives for these clauses. He was referring to some inconsistencies between different legislation relating to the special parliamentary procedure. That is what we are dealing with through clause 20. I do not think that anyone is suggesting that poor drafting is the only reason. The hon. Lady herself referred to streamlining. We are building on the streamlining that took place in the Planning Act 2008 to create the single development consent order. We are trying to give that more effect and tidy up some of its interactions with the special parliamentary procedure.

The hon. Lady referred to comments by the National Infrastructure Planning Association on open space. We recognise the issues that it raises and its desire for these changes to go further. However, we believe that the clause, although complex, strikes the right balance and ensures that the special parliamentary procedure will work properly in the future. It is important that we have the SPP, as it provides an important level of protection for the most precious spaces, which is why we are retaining it with regard to certain kinds of land. We believe that this measure will simplify matters. Even if the clause is not simple, the hope is that the procedures that Government and infrastructure projects will have to go through will be simpler as a result.

The hon. Lady asked about the assessment of the phrase, "strongly in the national interest". As is always the case when making planning decisions, the Secretary of State is acting in a quasi-judicial capacity. There is a whole history of precedent and case law, often tested in court by judicial review, establishing whether one has made the case that something is strongly in the public interest or not. It is better to leave some discretion as to how that is determined, knowing that it can always be challenged through judicial review, through the courts, if it is inconsistent with previous decisions. I think that that is probably a better way and a slightly more—dare I say it?—English way of proceeding than necessarily setting out the detailed criteria. One always finds that those criteria miss something, so practice is the best guide, but of course that is open to challenge.

I hope that those explanations have reassured the hon. Lady on some points. I therefore commend the clause to the Committee.

Question put and agreed to.

Clause 19, as amended, accordingly ordered to stand part of the Bill.

Clause 20

Modifications of special parliamentary procedure in certain cases

Nick Boles: I beg to move amendment 84, in clause 20, page 22, line 3, at end insert—

'(c) paragraph 22 of Schedule 3 to the Harbours Act 1964 (harbour revision or empowerment order authorising compulsory purchase of, or of rights over, inalienable National Trust land or land forming part of a common, open space or fuel or field garden allotment),

(d) paragraph 12 or 13 of Schedule 4 to the New Towns Act 1981 (order authorising compulsory purchase of local authority land, inalienable National Trust land or land forming part of a common, open space or fuel or field garden allotment), or

(e) section 12 of the Transport and Works Act 1992 (order authorising compulsory purchase of, or of rights over, inalienable National Trust land or land forming part of a common, open space or fuel or field garden allotment).

(4) A reference in this Act to land to which a special-acquisition provision applies is to be read as follows—

(a) "land" has the same meaning as it has for the purposes of the special-acquisition provision, and

(b) in the case of a special-acquisition provision mentioned in subsection (3)(c) or (e), the reference is to—

(i) land (as so defined) belonging to the National Trust which is held by the Trust inalienably, or

(ii) land (as so defined) forming part of a common, open space or fuel or field garden allotment.

(5) The definition of "the National Trust" given by section 7(1) of the Acquisition of Land Act 1981, and section 18(3) of that Act (meaning of "held inalienably"), apply for the purposes of subsection (4)(b)(i).

(6) In subsection (4)(b)(ii) "common", "fuel or field garden allotment" and "open space" have the same meaning as in section 19 of that Act."'.

The Chair: With this it will be convenient to discuss Government amendments 85 and 86.

Nick Boles: These minor amendments ensure that we catch relevant Acts of Parliament under which the special parliamentary procedure can apply. That is

particularly in response to some of the poor drafting my right hon. Friend the Secretary of State mentioned on Second Reading.

Clause 20 ensures that where special parliamentary procedure is triggered for certain types of land under the Planning Act 2008 or the Acquisition of Land Act 1981, consideration under special parliamentary procedure will be limited to the compulsory acquisition of special land.

The three minor amendments in the group extend that principle to other Acts where it is clear that the original intention was to limit the scope of special parliamentary procedure in that way. I therefore hope that the Committee will support the inclusion of the amendments in the Bill.

Amendment 84 agreed to.

Amendments made: 85, in clause 20, page 22, line 26, at end insert—

'(5A) In section 3(4A)—

(a) the reference in the opening words to the order to which a petition relates is to be read as a reference to the order containing the special authorisation to which a petition relates, and

(b) in paragraph (a) the reference to the order being one that relates to proposals of the kind mentioned is to be read as a reference to the Chairmen being of the opinion that removal of the special authorisation from the order would be inconsistent with proposals of that kind.'.

Amendment 86, in clause 20, page 25, line 13, leave out from 'in' to end of line 15 and insert

'paragraphs 4(2) and 5(2) of Schedule 3 (certain compulsory purchase orders subject to special parliamentary procedure so far as authorising acquisition of rights over special land if owner objects to the order) for "the order" substitute "the compulsory purchase of the rights".

(7A) In paragraph 12 of Schedule 4 to the New Towns Act 1981 (certain compulsory purchase orders subject to special parliamentary procedure so far as authorising acquisition of special land if owner objects to the order) for "to the order" substitute "to the acquisition of the land".

(7B) In each of the following provisions (which refer to orders confirmed by Act under section 6 of the 1945 Act) before "6" insert "4 or"—

section 44(1) of the Harbours Act 1964,

section 27 of the Acquisition of Land Act 1981,

paragraph 16(a) of Schedule 4 to the New Towns Act 1981,

paragraph 6(6)(a) of Schedule 11 to the Water Industry Act 1991,

paragraph 6(6)(a) of Schedule 19 to the Water Resources Act 1991, and

section 12(3)(b) of the Transport and Works Act 1992.'.—*(Nick Boles.)*

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

Roberta Blackman-Woods: I do not want to detain the Committee long on the clause, although, at four pages, it is rather long. As we know, it is about limiting the provisions that will be subject to parliamentary scrutiny and in what circumstances, and I have quite a straightforward question for the Minister. The clause is very dense, and the Government have paid a lot of attention to reducing the number of cases in which special parliamentary procedure will apply. However, they have not paid attention to shortening the process, and in reducing the number of cases that can be dealt with under it, they have done nothing to guarantee that it is speeded up a bit. That is a bit extraordinary, because in the one case we all know of, it has taken an incredibly long time to get the Committee up and running and doing its job properly.

Given that the Bill is supposed to be a growth Bill, and is being presented as the Government's flagship growth Bill, it is a little odd to give four pages of the Bill to a set of circumstances that do not apply to many cases, and not to consider speed as important. The Government are saying that we need growth now and that we need quickly to remove some of the impediments to it, so why not address the issue of speed in the clause?

11 am

Nick Boles: Yet again, if you will allow me, Mr Howarth, I will speak at a little length, because the clause is complicated. Towards the end of my remarks I will answer the hon. Lady's reasonable question.

Clause 20 amends the Statutory Orders (Special Procedure) Act 1945, which prescribes the operation of special parliamentary procedure. It ensures that where a development consent order under the Planning Act 2008 triggers special parliamentary procedure, the consideration of the order will be limited to the order only in so far as it authorises compulsory acquisition of special land.

It also applies similar changes for other orders involving the compulsory acquisition of specially protected land made under sections 17, 18 and 19 of the Acquisition of Land Act 1981. That will ensure consistency in the operation of the special parliamentary procedure.

The need for clause 20 reflects an inconsistency between the 2008 Act and the 1945 Act and, similarly, between the 1981 Act and the 1945 Act. That was drawn to the Government's attention by the Chairmen in their initial report on the Rookery South (Resource Recovery Facility) Order 2011, which is currently subject to special parliamentary procedure.

The intention of Parliament in the 2008 Act was that the special parliamentary procedure should be restricted to just the element of the consent order authorising the compulsory acquisition of special land. However, the 1945 Act does not currently make provision for Parliament to consider just part of an order. That undermines the intention of the 2008 Act and means that decisions on matters such as planning permission that have properly been decided by a Minister in accordance with that Act are open for reconsideration by Parliament.

Clause 20 seeks to resolve the inconsistency and the problem that it causes. It amends the 1945 Act so that it also makes provision for circumstances where special parliamentary procedure should apply only to a limited extent; for example, as was intended in the Planning Act 2008.

It may be helpful if I give a brief summary of how the limitation would work in practice. The limitation is achieved by identifying provisions in the Planning Act 2008 and the Acquisition of Land Act 1981 that trigger special parliamentary procedure as special acquisition provisions. A new section 1A in the 1945 Act then provides that, where an order is subject to special parliamentary procedure under a special acquisition

[Nick Boles]

provision, the part of the order that authorises the compulsory acquisition of special land is known as a special authorisation.

Subsections 3 to 18 of the new section 1A set out modifications to the 1945 Act making the relevant changes. Many of them provide that references in the 1945 Act to the order are read as references to the special authorisation. The overall effect is that the consideration under special parliamentary procedure is limited to the compulsory acquisition of special land; for example, under the new section 1A, section 3 of the 1945 Act, which makes provision for the examination of petitions against an order, must be read so that petitions against an order are to be construed as petitions against a special authorisation. The effect of that is that petitions can be certified as proper to be received only if they are petitions against the elements of an order authorising the compulsory acquisition of special land. Under the modified provisions the Chairmen may certify either that a petition is one of amendment to a special authorisation or, if it is against the special authorisation generally, that it is a petition of general objection.

Once the Chairmen have reported on petitions against a special authorisation, there remains a 21-day period during which either House can resolve to annul a special authorisation. If that happens, the whole development consent order or compulsory purchase order to which the special authorisation relates will have to be withdrawn or submitted to Parliament as a Bill for confirmation of the order. If neither House resolves to annul the special authorisation, any petitions against it that have been certified as proper to be received will be referred to a Joint Committee of both Houses. If there are no such petitions then special authorisation will come into operation.

Where petitions have been certified as proper to be received and are considered by the Joint Committee, it may report the special authorisation with or without amendment; or, if a petition of general objection is received, it may report that the special authorisation should not be approved.

Where a special authorisation is reported by the Joint Committee without amendments, the relevant order will come into operation. Where, on the other hand, a special authorisation is reported by the Joint Committee with amendments, the Minister may elect to bring the order into force as amended or, if that is inexpedient, he or she may either withdraw the order or submit it to Parliament for further consideration by means of a Bill.

Finally, if the Joint Committee reports that a special authorisation should not be approved, the order to which that special authorisation relates will not take effect unless confirmed by an Act of Parliament. The clause is necessarily complicated, but it achieves the desired aim and will ensure that special parliamentary procedure in any future cases is limited to the consideration of the compulsory acquisition of special land.

The hon. Member for City of Durham asked about the speed of the procedure. Although I accept that the clause is immensely complicated—indeed, I am slightly surprised that the hon. Lady did not accuse us of trying to create employment in the parliamentary drafting office—it will help to speed up the special parliamentary procedure because it reduces the number of circumstances in which it can apply, and it will ensure that in future the procedure will be able to consider the compulsory acquisition of only special land and not other parts of the project, thereby limiting the range of issues that can be opened up.

The hon. Lady specifically asked why it took four pages to introduce the provision. Unfortunately, because of having to clean up so many other Acts, that was the only way we could make the SPP fit for future operation. One of the few things I have learnt in this process is that once we start having to change things in preceding Acts, the drafting becomes a lot more complicated.

Roberta Blackman-Woods: I am not sure that I was querying the fact that the provision took four pages. Clearly, it is taking four pages to put right whatever it is that the Government think needs to be put right. I was querying the priority given to the measure, in relation to promoting economic growth.

Nick Boles: The hon. Lady makes a reasonable point. I do not think that anyone on the Government Benches would pretend that this was the clause that was most likely to have a transformative impact on the country's economic prospects. We are absolutely certain that that is the case with other clauses. However, in relation to the people who have a particular interest in the infrastructure projects and the economic regions around them, the clause will have a crucially important effect in ensuring that such projects can go ahead. It is worth, therefore, the time that has been taken to draft and consider it.

Question put and agreed to.

Clause 20, as amended, ordered to stand part of the Bill.

Clause 21

Bringing business and commercial projects within Planning Act 2008 regime

Roberta Blackman-Woods: I beg to move amendment 101, in clause 21, page 25, line 23, after 'may', insert

'subject to regulations excluding sites of special environmental or historic importance,'.

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

Amendment 103, in clause 21, page 25, line 33, at end insert—

'(aa) the development does not involve surface mineral extraction or quarrying.'.

Amendment 109, in clause 21, page 25, leave out line 33.

Amendment 110, in clause 21, page 25, leave out line 43.

Amendment 111, in clause 21, page 26, line 10, leave out from 'project)' to end of line 11.

Amendment 112, in clause 21, page 26, leave out lines 12 and 13 and insert—

'(5) In this section, "business or commercial project" means a project which consists of any of the following—

(a) offices and research and development facilities;

(b) manufacturing and processing proposals;

(c) warehousing, storage and distribution facilities;

(d) conference and exhibition centres;

(e) leisure, tourism and sports and recreation facilities;

(f) extractive industries (mining and quarrying); and

(g) mixed-use developments, including one or more of the above uses but not retail where it is the main or predominant use or housing except where it is incidental.

(6) The Secretary of State may by order, subject to consultation—

(a) amend subsection (5) to add a new type of project or vary or remove an existing type of project;

(b) make further provision, or amend or repeal existing provision, about the types of project which are, and are not, within subsection (5).

(7) An order under subsection (6)(b) may amend this Act.'.

Roberta Blackman-Woods: Clause 21 seeks to bring new types of project into the major infrastructure regime established by the Planning Act 2008. Although I am pleased that the Minister recognises that the Act, introduced by the previous Labour Government, is working well, I have to say that that is unusual for him.

A number of points in the clause diverge significantly from the aims and processes established by the 2008 system. The first is the inclusion of business and commercial projects alongside the existing and more narrowly defined categories such as energy and ports, without national policy statements underpinning them. We were pleased to see the publication of the consultation document last week, which, as I have said, was done somewhat sooner than other consultations relating to the Bill. It is none the less worrying that a clause that will lead to such an enormous change in planning policy has been included in the Bill before any consultation has been done on it, including on whether the clause is necessary. There is a significant amount of concern about what will be captured under business and commercial, and whether sending such projects directly to the Secretary of State where the applicant chooses will speed up decision making.

The amendments look in different ways at the scope of business and commercial and at whether the term will be efficient in identifying nationally significant projects and promoting growth. We will return later to the issue of whether the measures in the Bill will promote growth.

Amendment 101 would ensure that environmental and historic protections remain in place and that the major planning regime does not become a tool to bypass proper protections. The amendment would do that by including a reference to

"regulations excluding sites of special environmental or historic importance"

in proposed new section 35(1). The areas to which that exclusion would apply would be few. However, there are areas where unconstrained development not only would be bad for the environment and residents, but could be detrimental to the economy. A seaside town that is largely dependent on tourism for its income may, for example, be better off without a giant warehouse on the outskirts of town.

I am sure the Minister can appreciate the need for some protections for particular areas, given the extent to which he intends to increase the scope of the major infrastructure regime. Protection is particularly necessary when no national strategy is being offered to help guide where major developments should take place and how they will fit in with other projects. Later in the Committee's deliberations, I will return in more detail to a specific amendment on the need to underpin clause 21 with national policy statements.

Amendment 103 is more specific about the types of application we seek to exclude by adding that business and commercial projects should not include quarrying or surface mineral extraction, such as open-cast mining. Evidence submitted by the Loose Anti Opencast Mining Network shows that on the basis of current applications, the 100-hectare threshold set out in the consultation document would capture a third of open-cast mining applications currently in the public domain or under consideration. That is a huge proportion to be taken out of the control of the local authority and local people.

There is also a risk that applications close to the threshold would upsize in order to bypass local consultation. For example, the Ferneybeds application near Ashington is for an open-cast mine of 95.6 hectares. The developer might consider increasing the size of the site so as to avoid the local authority's scrutiny of the application, which would enable a lot of the resistance in local communities to open-cast mining to be taken into account. That is worrying, because as the Loose Anti Opencast Mining Network states:

"The larger the site, the more sensitive is the issue of the impact that the site will have on the local communities and the more people it will affect."

The issue is especially pertinent, given, as we will discuss in more detail later, the loss of primacy for the local plan under the system and the Minister's refusal to consider national policy statements. That entirely undermines democratic accountability in the system, and drowns the voice of the affected community. It is therefore important that we exclude the practices that are likely to cause the most anger and distrust in the system and guarantee that applications will be decided by democratically elected people who understand local concerns.

11.15 am

The point was supported by Dr Ellis of the Town and Country Planning Association, who not only talked about democratic accountability but argued that the system works well as it is. In his evidence to the Committee, he said:

"Speaking as someone who has done a bit of minerals planning, there is no problem, for example, with the minerals planning regime in England. It is an effective regime. It does not need to be drawn out of town and country planning, but it is a controversial regime in some areas. Given its controversy, it works remarkably well. Whether that is the intention or not, I worry whether a message is being sent that drawing to the centre critical decisions is somehow a way of dealing with the long-standing problem on the ground. For me, it would be about a different, perhaps positive, attempt to rebuild that relationship with communities."–[*Official Report, Growth and Infrastructure Public Bill Committee,* 19 November 2012; c. 104, Q247.]

In 2011, I took part in a debate on the private Member's Bill introduced by the hon. Member for North West Leicestershire (Andrew Bridgen), which sought to introduce a buffer zone of 500 metres between any open-cast mining site and residential dwellings. Few members of the Committee attended that particular debate, but I am sure that many Members on both sides would support the aims of the Bill, which, in the words of the hon. Gentleman, sought to

"offer protection to communities not only in North West Leicestershire but in dozens of constituencies in former coalfields throughout the country."

Debates on private Members' Bills are not always the best attended parliamentary occasions, but what was interesting about that debate was that most of the people who were there to present and support that Bill were Conservative Members of Parliament who were desperately concerned about the impact of open-cast mining, or the potential of open-cast mining, on their communities. I urge the Minister to read the *Hansard* coverage of the Bill's deliberations because there were lots of different examples of the way in which open-cast mining had seriously impacted on local residents not only as a result of the dust and noise but because of the hours of work which saw local communities disturbed very early in the morning and sometimes late at night if some of the quarry was being moved for a special order.

If the Minister is going to criticise us for raising this as a real concern, he must take on board the views of a number of Government Members, because they supported that private Member's Bill. There were also a number of Members who supported it because of the concerns in relation to their constituencies. We are very concerned that if a request for an open-cast mine or quarry site can bypass the local community for determination, issues such as the proximity of the site to local residents or what particular residents feel about that application may not be taken into consideration sufficiently. I am sure that the Minister will say that, under the process, there will be public hearings and attention given to the local community, but the drive of the clause is in the wrong direction or, in relation to mining or quarrying, it is a step too far.

Like other hon. Members, I have seen applications for open-cast mining, because I represent an ex-mining community. They are not all successfully resisted and, at times, with proper safeguards in place, it is possible to persuade a local community that the economic benefit of open-cast mining overrides the environmental impact. However, that happens only in circumstances where the community can strongly argue its case with the developer, often with the local authority being onboard and supporting the residents, and with elected representatives being very familiar with the area affected by open-cast mining or quarrying.

I am concerned that the clause will compound the problem of communities feeling disempowered by attempts to change legislation and deny them a say in whether they should have open-cast mines in their back gardens. That is not ridiculous; it is not hyperbole. Some open-cast mines and sites impinge hugely on local residents. The clause is not right, and mining and quarrying should not be included in consultation documents. The very intrusive nature of such developments and how they can impact so negatively on local communities means that this is not the correct way forward. Will the Minister consider whether it is essential for increasing growth to have projects that, if they are not considered carefully, can damage the environment as much as open-cast mining and quarrying?

I hope that the right hon. Member for Hazel Grove will support the amendment. In his previous ministerial capacity, he responded to our debates on the private Member's Bill. He did not give it Government backing, but he said:

"Although most people see my constituency as a leafy suburban area adjacent to a national park, it has the same coal beneath it as is under the constituencies of the hon. Members for South Derbyshire (Heather Wheeler) and for Amber Valley (Nigel Mills), so I fully understand the high level of public concern about these applications. The concerns about the environmental protection lost as a result of the intrusion of these developments and about the dust are often well justified."—[*Official Report*, 11 February 2011; Vol. 523, c. 648 and 661.]

The Committee should note that and take it on board in our discussions. Our concerns are justified, so I hope that the right hon. Member for Hazel Grove and his hon. Friend the Minister will support the amendment to ensure that local people have a say over applications relating to mining and quarrying.

Amendments 109, 110 and 111 would remove references to business and commercial projects of a description prescribed by the Secretary of State. From the consultation documents, we know that that prescription will presumably fall in line with what eventually emerges as the list of types of projects to be included.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.