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Public Bill Committee

LOCALISM BILL

Twelfth Sitting

Thursday 10 February 2011

(Afternoon)

CONTENTS

CLAUSES 66 to 74 agreed to.

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The Committee consisted of the following Members:

Chairs: † MR DAVID AMESS, HUGH BAYLEY

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| † Alexander, Heidi (<i>Lewisham East</i>) (Lab) | † † Ollerenshaw, Eric (<i>Lancaster and Fleetwood</i>) (Con) |
| † † Barwell, Gavin (<i>Croydon Central</i>) (Con) | † † Raynsford, Mr Nick (<i>Greenwich and Woolwich</i>) (Lab) |
| † † Bruce, Fiona (<i>Congleton</i>) (Con) | † † Reynolds, Jonathan (<i>Stalybridge and Hyde</i>) (Lab/Co-op) |
| † † Cairns, Alun (<i>Vale of Glamorgan</i>) (Con) | † † Seabeck, Alison (<i>Plymouth, Moor View</i>) (Lab) |
| † † Clark, Greg (<i>Minister of State, Department for Communities and Local Government</i>) | † Simpson, David (<i>Upper Bann</i>) (DUP) |
| † † Dakin, Nic (<i>Scunthorpe</i>) (Lab) | † † Smith, Henry (<i>Crawley</i>) (Con) |
| † † Dromey, Jack (<i>Birmingham, Erdington</i>) (Lab) | † † Stewart, Iain (<i>Milton Keynes South</i>) (Con) |
| † † Elliott, Julie (<i>Sunderland Central</i>) (Lab) | † † Stunell, Andrew (<i>Parliamentary Under-Secretary of State for Communities and Local Government</i>) |
| † † Gilbert, Stephen (<i>St Austell and Newquay</i>) (LD) | † † Ward, Mr David (<i>Bradford East</i>) (LD) |
| † † Howell, John (<i>Henley</i>) (Con) | † † Wiggin, Bill (<i>North Herefordshire</i>) (Con) |
| † † Keeley, Barbara (<i>Worsley and Eccles South</i>) (Lab) | |
| † † Lewis, Brandon (<i>Great Yarmouth</i>) (Con) | |
| † McDonagh, Siobhain (<i>Mitcham and Morden</i>) (Lab) | |
| † † Mearns, Ian (<i>Gateshead</i>) (Lab) | |
| † † Morris, James (<i>Halesowen and Rowley Regis</i>) (Con) | |
| † † Neill, Robert (<i>Parliamentary Under-Secretary of State for Communities and Local Government</i>) | |

Sarah Davies, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 10 February 2011

(Afternoon)

[MR DAVID AMESS *in the Chair*]

Localism Bill

Clause 66

DUTY TO CONSIDER EXPRESSION OF INTEREST

Amendment proposed (this day): 88, in clause 66, page 48, line 28, at end insert—

- (c) the relevant authority reasonably believes that, if the authority accepts the expression of interest, the relevant body intends to submit a bid to provide the service in the procurement exercise to be carried out by the relevant authority under section 68(2), and
- (d) the expression of interest provides evidence that a majority of the users of the relevant service, or those otherwise affected by the expression of interest, support the expression of interest.’—(*Barbara Keeley.*)

1 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following: amendment 114, in clause 66, page 49, line 1, after ‘means’, insert

‘a body, the activities of which are not carried on for profit, and which is’.

Amendment 90, in clause 66, page 49, line 7, after ‘authority’, insert

‘who have secured, by ballot, the support of a majority of those employees of the relevant authority whose principal work, in their capacity as employees of the relevant authority, is in the provision of the relevant service’.

Amendment 115, in clause 66, page 49, line 7, after ‘authority’, insert

‘who have formed an organisation for charitable purposes or a community interest company or industrial and provident society’.

Amendment 91, in clause 66, page 49, line 8, leave out paragraph (c).

Amendment 113, in clause 66, page 49, line 13, after ‘voluntary’, insert ‘or community’.

Amendment 92, in clause 66, page 49, line 17, at end insert—

‘(8A) For the purposes of subsection (5) the meaning of “body” is restricted to a body whose principal activities are carried out in the area of the relevant authority.’.

Amendment 93, in clause 66, page 49, line 18, leave out subsection (9).

The Minister of State, Department for Communities and Local Government (Greg Clark): It is good to have you back in the chair in resonant form, Mr Amess. May I take this opportunity to associate myself with the remarks that the hon. Member for Worsley and Eccles

South made at the beginning of our previous sitting? I express our thanks to the officials and Clerks who toiled into the night earlier in the week. We, on the Government Benches, share the gratitude the hon. Lady expressed.

We were discussing the question, raised by amendment 92, of whether restricting the expression of interest to local bodies was right. I made the point that there are many national organisations with local branches that might be particularly useful in helping to build capacity in areas that may not have a local body at the outset. It is deliberate and right that we have chosen to do things in that way to kick-start the process.

Amendment 113, in the name of the hon. Lady, seems pretty benign. There is no deliberate exclusion of the word “community” where subsection (7) says “voluntary”. As she knows, the form in such matters is to reflect on the issue, check that there is no technical reason for the exclusion and come back to it on Report if necessary, but I see nothing particularly objectionable in the amendment.

Accepting amendment 114 would lead to an unnecessary restriction. It seeks to make every organisation that takes up the right to challenge and to express an interest explicitly not-for-profit. One of my hon. Friends made the point earlier that we and, I think, the Opposition Front-Bench team are in favour of mutuals and co-operatives being created. I do not know if there are any members of the Co-operative party on the Benches opposite—

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op) *indicated assent.*

Greg Clark: There are. The hon. Gentleman will not need to be persuaded that the co-operative form has a lot to offer the country, and we would like a revival of it. Co-operatives sometimes make a surplus, which they return to their members, and I was interested to read that the Co-operative Group announced a record profit of £50 million, which will go to its members as a dividend. It would be unnecessarily restrictive to exclude co-operatives, whether they be micro and very small or voluntary enterprises that structure themselves in that way. We would not want that to happen, inadvertently or otherwise.

Mr David Ward (Bradford East) (LD) *rose—*

Greg Clark: In fact, I think it was my hon. Friend who made that point.

Mr Ward: Just for clarity, which part of the clause specifically allows a co-operative or social enterprise, which we agreed this morning would be a welcome challenger for local services, to express an interest? It mentions voluntary and community groups. I am just inquiring.

Greg Clark: A very good point. The point made through the amendment is that the clause would prevent such a body from expressing an interest, but paragraphs (a) to (e) of subsection (5) refer to “two or more employees” of an authority, so that would be a means for a co-operative to express an interest. In paragraph (e),

the Secretary of State may include co-operatives by regulation. It would be our intention in regulation to specify co-operatives, mutuals and social enterprises as being a particular type of "relevant body".

Nic Dakin (Scunthorpe) (Lab): I think that the real concern, expressed by many bodies that have given evidence to the Committee, is that activity in a locality might be siphoned off through profit, and that profit spent in another locality. Will the Minister assure the Committee that if the amendment is not accepted, there will be controls somewhere else in the Bill to ensure that that cannot happen?

Greg Clark: I am grateful for the hon. Gentleman's question. Clearly, the provision could have been expressed in a way that did not specify community bodies. We are interested to ensure that at the next stage—the procurement exercise—social value in the local area can be taken into account. That is very much our intention. As the hon. Member for Worsley and Eccles South said, there is currently a consultation on the drafting, and if any concerns come out of that we will reflect on them. However, the Government's intentions are clear to the Committee.

Amendment 91 in the hon. Lady's name would strike out paragraph (e), which says:

"such other person or body as may be specified by the Secretary of State by regulations"—

that is, it would strike out the list of bodies. That directly addresses the points made by my hon. Friend the Member for Bradford East.

Members of the Committee who are interested in such matters will know that we are talking about an area of great change. Different types of bodies have established themselves. The social enterprise movement has long traditions, but it is flowering in ways that present different models and organisational forms. There are community interest companies, and companies limited by guarantee. Those new arrangements allow bodies with a social purpose to establish themselves.

Given that we are dealing with primary legislation, it is important to allow flexibility for the Secretary of State to bring in regulations, so that if a new organisational form is developed in future—a mutual or co-operative may have a particular legal form in the future—the Secretary of State can include it in the list without bringing a Bill before Parliament, which, clearly, almost never happens.

For that reason, we think it important to have that flexibility, and to have the list in a statutory instrument rather than the Bill. I hope that the Committee will accept that the clear intention throughout this process, as expressed in the consultation document, is to keep up with innovation and change, rather than to licence a great multinational company to bring something forward; I reassure the Committee of that. I am sure that those words will be considered in any future debate on a statutory instrument on the subject. That is the reason for the flexibility.

Amendment 93 concerns a more wide-ranging power for the Secretary of State to amend and keep provisions up to date. I have heard the observations made in previous sittings by Opposition Members—and in some cases by my hon. Friends—about whether all the safeguards

are needed. I hope that the Committee will accept that the intention is to go with the spirit of the Bill and keep it flexible and up to date, recognising that this is an organic area of policy and that different forms may develop.

During the evidence sessions, in response to a question from the hon. Member for Scunthorpe, I made a commitment to reflect on whether the powers are needed to their full extent. I agree that the power is far-reaching, but it is for a positive purpose. I undertake to reflect on that, and on some of the other powers, and look at whether there may be alternative ways of capturing the requirement for such flexibility. However, I think the flexibility is important.

The hon. Member for Lewisham East, who is not in her place at present, mentioned one thing that I would hate to happen—a piece of legislation suddenly going out of date and people not being able to take it up. I want it to be a live piece of legislation, and the way to keep it live is to allow statutory instruments to update it from time to time, but I will reflect on that and say more about it on Report. I think that I have touched on all the points raised.

Jack Dromey (Birmingham, Erdington) (Lab): May I ask the Minister to look at amendment 90? I do not think that he has commented on it yet, although it may be his intention to do so later. It relates to an expression of interest by two or more employees. I have been deeply involved in procurement issues for 25 years. At the Ministry of Defence, I worked with a succession of Secretaries of State, from the colourful Michael Heseltine to Des Browne and, during that period, an interesting discussion evolved about how we best protect propriety and the public interest and, incidentally, how we give employees a voice in the process. The general view was that the last thing we should allow for is—to use a term used in certain other situations—insider trading, which allows individuals to benefit as a consequence of a procurement process or, in this case, of initiating a process that might lead to a procurement decision.

In the light of the recent decision that was rightly taken to abort the tendering exercise for the air-sea rescue service, is the provision not a recipe for two individuals to get together, spot an opportunity for themselves and go for it, regardless of the public interest or that of the community? Unless a safeguard is built into the provision, it is surely open to serious abuse.

Greg Clark: I take the hon. Gentleman's contribution in the spirit in which it was intended. There is no intention to allow abuse, and there is a safeguard. I think that I addressed the amendment at the beginning of my remarks. We are talking about whether we should put obstacles in the way of people who express an interest. To require any group of employees to organise a ballot of other employees in advance of even expressing an interest would be a burden. It would most likely be costly and put them off. The authority has every right to consider the implications of responding to a particular expression of interest, and the right time to do that is when it receives it. Authorities have pretty wide powers to make reasonable decisions in response to an expression of interest, but to debar anyone from even expressing an idea would have the effect of chilling the prospect of people suggesting different ways of doing things.

Jack Dromey: In the light of that answer, I think it would be appropriate for us to return to the issue when we discuss clause 68.

Greg Clark: I am happy to accept that.

Barbara Keeley (Worsley and Eccles South) (Lab): It is a pleasure to serve under your chairmanship again, Mr Amess. I thank hon. Members, including my hon. Friend the Member for Lewisham East, who is not in her place at the moment, my right hon. Friend the Member for Greenwich and Woolwich and my hon. Friend the Member for Birmingham, Erdington, for their contributions on this large group of amendments. It is also important that we thank the third sector organisations that have sent us a lot of information, comments and quotes, and my right hon. Friend the Member for Salford and Eccles (Hazel Blears), who has pressed certain points with me, due to her interest in the Bill.

It is helpful that the Minister accepts the first part of amendment 88. He feels that the second part would be burdensome, but the whole process is acknowledged to be a burden for local authorities, so to consider any safeguard to be a burden is ironic. I hope that he will consider how to protect the interests of users when we discuss clause 68.

1.15 pm

I am pleased that the Minister thinks that some of the amendments are benign, and hope that he will reflect on some aspects of the wording. The difficulty is the same as that which we have had with other clauses and parts of the Bill, namely that the Secretary of State's powers to change things by regulation will replace this Committee's scrutiny. The Minister uses the word "benign", but the belief among the Opposition and a number of outside organisations is that those powers are not benign until we see that they are. That is almost too big a jump of faith. We still feel the need for safeguards, but maybe not the exact ones that I have put forward.

My hon. Friend the Member for Birmingham, Erdington, made a point about the ability of two employees of a local authority to put in expressions of interest and launch a procurement. That has been described as a loophole; I read out some quotations earlier on that. At lunchtime, I looked back over the notes from outside organisations. The National Council for Voluntary Organisations is very concerned about the issue:

"While a right to challenge is to be welcomed, this has to be considered as part of the much wider context of public service delivery. Being able to challenge who runs a particular service can only go so far. Public service delivery cannot be improved just by transferring the organisation delivering it to another one."

It thinks it is important to have the widest possible focus. If it is just a question of two people putting in a bid, and they run the service instead of another organisation, that does not achieve the sort of change that I think the Minister definitely wants. That particular part of the clause has been seen as a loophole, and it is important to find a way to close it while we scrutinise the Bill.

I notice that the Deputy Prime Minister is said to be trying to clarify the extent of public service reform in a speech he is making today. I hope he will also touch on the limits. An article—I do not know how authoritative it is—in *The Guardian* says:

"He will also say that charities will have the right to force an open tendering process for public services, but will promise that that right will not be extended to businesses."

If the Minister promised that that right would not extend to businesses, we would not have the issues of definition that we are working through in this group of amendments. That is entirely the source of worry.

Another thing looked for by third sector organisations is the involvement of users, rather than an abrupt change in who delivers the service. As I indicated when talking about social care, that sort of change can be very disruptive and difficult. The National Council for Voluntary Organisations, which understands these things, said,

"The more that local people and service users can be involved in the commissioning process, designing and shaping what that service actually is, the more responsive it will be to local needs."

That is important.

Amendments 91 to 93 cover the point I have just made. Without the assurance that I have just asked of the Minister, we cannot trust the issues to powers for the Secretary of State. We do not trust, or think that there is a need for him to have, those wide powers to change definitions and add things later.

The Minister did not seem to accept my argument on amendment 92. He feels that national bodies should be able to bid for all contracts, even if they have no presence in the locality. That will not help to build the capacity that many people feel is needed in the third sector. From the debate that we had earlier, I am sure that the Committee shares that view. I remind the Minister that the Development Trust Association and bassac have jointly said:

"The new power will not be effective without nationwide access to technical support, feasibility support, and finance."

That is important. I have quoted the figures from the impact assessment; I do not think that £5 million nationally, or £15,000 per local authority, is sufficient for that support. The Minister has not touched on that.

Although the Minister has accepted a couple of our proposals as "benign", he has not been willing to engage with all the amendments that we have put forward. I will not put them to the vote this afternoon, Mr Amess, because I believe we should have a look at the issue again on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Barbara Keeley: I beg to move amendment 89, in clause 66, page 48, line 34, leave out paragraph (d).

Clause 66(2)(d) would give the Secretary of State the power to specify, through regulations, further persons or bodies that are to be considered as relevant authorities, subject to the community right to challenge. The first point to make is that this would be another wide power. Will the Minister tell us which bodies the community right to challenge will be widened to include? Does he think it will be widened to include NHS bodies? That would give cause for concern. Will it be extended to housing associations? Page 22 of the consultation document—which came out only last Friday—says that the Government are minded to extend the community right to challenge to all fire and rescue authorities, which I was quite surprised to see. Why is that, and is there an agenda here?

I understand from the consultation paper that certain activities of fire and rescue authorities are core activities that would not be subject to expressions of interest. Happily, they include—this will be a source of relief to Opposition Members—firefighting, undertaking rescues from fires, and responding to road accidents. However, fire and rescue authorities have other vital functions, such as giving advice in the community about safety and fire alarms. Most importantly, they deal with other emergencies such as floods. I know that at least one Member here has experience of floods in his area. On the first point, firefighters undertake their community role when they are not on call-out for emergencies, so I see it as complementary to what they do. To take away part of their role would undermine their funding, and that is a serious worry.

I am particularly concerned about the idea that operations relating to floods could be subject to tenders for contracting out. If the contractor failed, in a flood situation, that could be life-threatening. Could the Minister explain why he is minded to extend the community right to challenge to fire and rescue authorities and other bodies or persons? Could he deal with the concern that if we give the power to the Secretary of State we will not have the chance to scrutinise that extension? As we touched on before, statutory instruments are not subject to amendment and do not involve the same parliamentary processes as a Bill. We will lose the power to amend if we hand these things over to the Secretary of State.

The Chair: Before I call the Minister, I should inform the Committee that I have been advised about the debate that took place this morning. In the light of that, and given what we have just heard, I am minded that we should not have a stand part debate.

Mr Nick Raynsford (Greenwich and Woolwich) (Lab): I had intended to make a few general observations about the clause, Mr Amess, so if that is the case, perhaps I may do that as I speak to the amendment.

I welcome the Minister's recognition that the Secretary of State's powers under this clause are defined very extensively and his willingness to reflect on that to determine whether some modifications might be made. We should make it clear just how extensive those powers are so that when he makes his comments on Report, we can judge whether there will be a significant rolling back of the clause's centralising tendency.

Let me take the Minister through the Secretary of State's seven different powers under the clause. The first is in subsection (1)(b), under which the Secretary of State has a power to set out requirements that have to be met by anyone making an expression of interest. That is a fairly small-scale administrative power, but many people would say that it is best left to the local authority to specify for its own area what requirements there might be. The second power is in subsection (2)(d), to which the amendment applies, under which the Secretary of State has a power to specify by regulation "such other person or body carrying on functions of a public nature".

My hon. Friend the Member for Worsley and Eccles South has rightly highlighted the possible areas of difficulty, and I could add my own thoughts about the fire and rescue service. Fire prevention activity has been

crucial in recent years in driving down fire deaths and improving the performance of fire authorities. I am concerned that owing to pressures, including financial cuts, that trend of improving fire safety will not continue.

It would be alarming if fire authorities were challenged about their fire prevention work. That work includes helping to install smoke alarms and other fire safety measures in individual homes, identifying the homes that are most at risk, and ensuring that they are targeted to help people to avoid the risk of fire and, therefore, unnecessary deaths. Those measures are important, so I would be troubled if the Secretary of State were to define that function as something that could be challenged by another organisation. Another organisation might be well intentioned, but it would almost certainly not have the kind of expertise and understanding that makes a fire and rescue authority best placed to perform that role, given the authority's access to advice, inherent expertise and knowledge of the characteristics of its area.

The Secretary of State's third substantial power is granted by subsection (4), under which he may exclude a particular "relevant service" from being covered by the provisions. Again, that power might be benign and there may be good reasons behind it, but I draw attention to the fact that the power is once again the Secretary of State's, not a local authority's, even though the authority might be best placed to decide whether certain services should be excluded from the power to challenge.

The fourth power is introduced by subsection (5)(e). The "relevant body"—those bodies able to mount a challenge—is defined in paragraphs (a) to (d), but paragraph (e) provides that the Secretary of State may add to those definitions

"such other person or body as may be specified by the Secretary of State by regulations."

As we discussed in our previous debate, that gives real cause for concern, although to give the Minister credit, he actually saw that that was a potentially wide power, so I hope that it is one of those that he will examine.

It is difficult for us to form a judgment on whether the Secretary of State will act in a benign and welcoming way when we do not have the detailed information. The Minister will get bored of hearing us making that complaint, but it is genuine. We do not know the Government's intentions, and that is why we must ask for rather more information than we have been given so that we can form a judgment.

The last three powers are set out in subsection (9), and they are genuinely Henry VIII provisions. Under paragraph (a), the Secretary of State may, by regulations, "amend or repeal any of paragraphs (a) to (d) of subsection (5)".

We have just discussed that subsection, which deals with relevant bodies. Secondly, under paragraph (b), the Secretary of State may

"amend or repeal any of subsections (6) to (8)".

The Secretary of State therefore has the power to amend or change by order the provisions that define "voluntary body" and "community body". Finally, under paragraph (c), the Secretary of State may, by regulations,

"make other amendments to this Chapter (including amendments to any power to make regulations) in consequence of provision made under subsection (2)(d) or (5)(e) or paragraph (a) or (b) of this subsection."

[Mr Nick Raynsford]

That is a wide-ranging, hugely centralising and extensive power for the Secretary of State, so it is hardly surprising that the Local Government Association responded to it by saying:

"This Chapter of the Bill takes a simple, localist idea—allowing community groups to bid to provide services currently provided by their local authority—and establishes a level of centralised control over how the process will work that is completely unwarranted".

Those are not the Opposition's words, but the words of the Local Government Association, which has a Conservative majority and a substantial Liberal Democrat membership.

That quote shows the problem that the Government have got themselves into. They have localist intentions, but they are proceeding with a series of ham-fisted measures that give the impression of heavy-handed centralisation. I must say that we expect the Minister to come back on Report with some significant concessions to moderate the Secretary of State's draconian powers so that we can achieve the benefit of the localist objective, but without the invasive power of the Secretary of State to change just about any provision in the clause.

Greg Clark: Let me deal with the points made by the hon. Member for Worsley and Eccles South first, which also touched on some of our previous discussion. Of course I agree with Nick, as we all do. The point is to allow community groups and social enterprises to submit an expression of interest. As I said on Second Reading, it was open to us to draw clause 66 so widely that any business in the country could express interest, but we deliberately chose not to do so.

The only thing that I would say to the hon. Lady is that these definitions change. I shadowed the office of the third sector portfolio, so I know that members of the social enterprise community are very insistent that they are regarded as enterprises and as being in the social business. A degree of flexibility in the definitions is needed to accommodate the myriad types of organisations that, quite rightly, fall into the category that we have in mind.

1.30 pm

Barbara Keeley: We need an assurance, particularly in the light of the article quoting the Deputy Prime Minister, that no for-profit, private sector company will be added through the Secretary of State's power. If the Minister can find some way of putting such an assurance in the Bill, we will have a lot less trouble with all those separate powers. There are so many different ways in which the Secretary of State could do that. It is not only the Opposition who are saying that, but outside organisations, the LGA and the third sector.

Greg Clark: I gave the hon. Lady the example of the Co-operative Group, which I am sure enjoys support from the Opposition. It has just announced a profit and a dividend. For the sake of appeasing the hon. Lady, I do not want to give a definition that would exclude important prospective contributors to the provision of services to communities. It is obvious from the Bill, from the consultation document and from everything

that I have said that this is about the community right to challenge. I do not think that there is any serious doubt that that is the purpose. I will not rule out co-operatives from participating. It would be easy to do so, but it is important that we allow them to participate.

Barbara Keeley: The Co-operative party is our sister party, and many Opposition Members are Labour and Co-operative members. If the only sticking block is the inclusion of co-operatives, will the Minister try to come up with a form of drafting that includes co-operatives, but leaves out large multinational companies and big conglomerates—the other types of body that are involved in lots of things that local authorities do, but that we want to exclude from this community right to challenge?

Greg Clark: They are left out. I am challenged to leave them out, but they are left out.

Nic Dakin: The reason why we are concerned is that the consultation is taking place at the moment. In a better-ordered world, the consultation would have taken place before the Committee so that we would have that information now. I trust the Minister when he says that the Secretary of State's powers are designed to allow things to happen positively in the future—I think that that is his genuine intention—but the problem is that a future Secretary of State could use those powers in other ways. We are looking for proper constraints and proper reassurances so that the powers cannot be used at variance with the Minister's intentions, which I believe to be good. I would appreciate it if the right hon. Gentleman thought hard about a form of words that would allow us to agree.

Greg Clark: I am grateful for that intervention. This is not just a matter for this Committee; this is legislation. One legislates for the long term with a recognition that the circumstances of the world change. Every Bill that goes through Committees such as this has to strike a balance between capturing the world as we see it today and recognising that we would be doing the greatest disservice to the people who use the legislation if they found that it was moribund after a year. Different types of organisations will emerge over time. If one reflects on the proliferation of new forms of social enterprise that have grown up just in the past 10 years, compared with what was there in the 1970s, it is clear that a degree of flexibility is needed. Every Bill will incorporate such flexibility. Given that we are talking about an important issue and a theme throughout the Bill, however, as I have said many times—I say it again—we will reflect on the best way to capture this.

Mr Ward: We seem to be losing track of the central issue: what is the greatest benefit to the electors in a community? I am sorry, but I have to put on the table that Bradford council was forced by a directive from a Labour Secretary of State to privatise its education service on a £300-million, 10-year contract. At that time, there seemed to be no objection to the privatisation of the service by a very large multinational company. However, I am pleased to say that two councillors—both Liberal Democrat—on the executive voted against the

proposal. We need to focus not so much on the issue of profit, but on the benefit to the local community of the tendering process.

Greg Clark: My hon. Friend is absolutely right. He makes the point that these questions are not new—they come up from time to time. On the points about how powers can be best contained, designing a process that can capture things that are not known now but might arise is not a novel approach. Given that one cannot risk a Bill—or the Act of Parliament—becoming moribund, there is a need to design a process that allows additions to be contemplated and scrutinised without the requirement to start from scratch with a whole new Bill. That is the essence of every Bill that goes through the House.

We will reflect on all these points, but given that we operate as a Committee, Opposition Members might make some suggestions of their own about how to capture the genuine need for flexibility. We can do that ourselves, and we will reflect on these points, but there is no reason why the Opposition should not take a fertile approach. We are very willing to listen.

Jack Dromey: I take the point made by the hon. Member for Bradford East, but this chapter is entitled “Community right to challenge”. Let me follow on from what my hon. Friend the Member for Worsley and Eccles South said earlier. For the avoidance of doubt, let us consider a sophisticated company that I have known and worked with for many years: Serco. The strategic arm of that company is the Serco Institute. It is legendary for always thinking ahead and looking at future market prospects. If Serco were looking at the Bill, and particularly the chapter on the community right to challenge, might it, as a consequence of the exercise of that right to challenge, derive commercial advantage by way of contracts?

Greg Clark: It would be improper for me to make the equivalent of *ad hominem* references to particular companies. However, it is absolutely clear that this chapter of the Bill—“Community right to challenge”—is about community organisations or existing employees.

Jack Dromey: Will the Minister give way?

Greg Clark: Not on this point, because I want to make some progress. I have set out the intention clearly.

Let me address some of the other points that the hon. Member for Worsley and Eccles South and the right hon. Member for Greenwich and Woolwich made. There is the question of the impact—the burden—on local authorities and whether the assessment of the likely take-up of the expression of interest is accurate or not. The hon. Lady made the point this morning that it is difficult to discern how frequently such a new right will be taken up. We have made the best estimate that we can. Throughout the process, as a service to the Committee, we have tried to be as precise as we can. However, the doctrine of new burdens does not apply just to the impact assessment and the amount assessed there: it is a serious and genuine commitment. If it transpires that the burden is greater, there is of course an obligation on the Government to reflect that in the actual funding. I make that commitment across all these clauses. The

estimate has been produced in good faith, but if it turns out in any of these instances to be an underestimate or an overestimate, there will be an opportunity to adjust the contribution to that burden in the future as the situation becomes apparent.

Let me deal with the point made by the hon. Member for Worsley and Eccles South about the fire and rescue service. That is nothing more than consistent with our earlier debates about the general power of competence. If we are to give the general power of competence to fire and rescue authorities as to local authorities, we will want to have a similar regime, not least because some fire and rescue authorities have the same characteristics as local authorities. The approach is designed to avoid anomalies. One of the provisions to which the right hon. Member for Greenwich and Woolwich referred was the specification of which services should be excluded from the right to challenge. Our approach is designed precisely so that we are able to capture these points, but it is important to maintain the consistency that we have with the right to challenge in other areas.

The fact that we have the opportunity to set out the types of services that we will exclude from the right allows such clarification to be put in place. If we were to put an exhaustive list of exclusions in the Bill, it would create a burden for not just local authorities, but communities, because the list would no doubt be interpreted by the courts to have a particular significance, and anything that was not on it could be interpreted as being deliberately left off it, rather than accidentally. The use of guidance is well established as a means of proceeding in such situations.

Mr Raynsford: The Minister makes a perfectly plausible case for flexibility, but the difficulty for the Opposition is that we simply do not know how the Secretary of State intends to use that flexibility. It is the absence of any indication of which organisations may be defined as relevant bodies under the power that makes it very difficult for us to judge whether the power will, as he says, be used in a benign way to allow flexibility, or whether it might allow entirely inappropriate definitions that could cause all sorts of difficulties, such as those that my hon. Friends and I have tried to identify.

Greg Clark: I hope that the right hon. Gentleman will accept that there is not an intention to do that, but he is right to address the question of how one can be assured of that. What I have said in response to the hon. Member for Scunthorpe is that there are ways of doing that; we are committed to consulting on the restrictions that we have in mind, and there is provision for statutory instruments to be debated. We should not pretend that we are talking about a novel set of procedures. There are tried and tested means of doing that, some better than others, and we should not regard this as a binary debate, or say that everything needs to be in the Bill; that would have even more unintended, perverse consequences than the steps we have taken. Leaving debate aside, everyone accepts that, so the question is: can we develop the right process of consultation, sharing proposals with the House, which will then have the opportunity to strike them down if they are not in keeping with indications that Ministers gave? That is the right approach.

[Greg Clark]

Let me deal with more of the points made by the right hon. Member for Greenwich and Woolwich. On the issue of other organisations that could be added and subsection 5(e), hon. Members will recall a criticism of the proposals made by members of the voluntary sector when the Committee took evidence. They made the point—I paraphrase—that if what is proposed is good enough for local government, should it not extend to parts of central Government? There is some force to that argument. As I am sure that my hon. Friend the Member for Bradford East would agree, it would be wrong to exempt ourselves from doing the things that we require of local government. The provision gives us the opportunity to do those things, following a process of setting out which bodies might be included, consulting on that list, and introducing it through regulations.

When Dr Keohane from the New Local Government Network gave evidence, he said:

“we think that it is sufficient, such that you could start opening it up across government, so it is not simply local councils, but Whitehall services as well.”—[*Official Report, Localism Public Bill Committee*, 25 January 2011; c. 41, Q64.]

We should respond to that demand. We should not do unto others and not do unto ourselves, and the provision allows that to happen.

1.45 pm

Mr Raynsford: While I agree with the Minister that there is no reason, in principle, why the measure should not be extended to central Government, it does not fit very well with a chapter entitled “Community right to challenge” to talk about extending it to Government Departments that have a national remit. Clearly, other considerations would come into play if we were talking about a provision for challenging Jobcentre Plus’s delivery of services in an enormous number of local networks. One could not conceivably have a community or voluntary organisation located in one small area of the country taking that on. Although the Minister’s views are sensible, the clause is not the right vehicle, and we remain suspicious of the provision that allows the Secretary of State to change things by order when there is so little clarity about the intention.

Greg Clark: The right hon. Gentleman is an experienced parliamentarian, and given this opportunity—I say “opportunity”, not “requirement”—to extend the same principles across other areas of public services, it would be bizarre to introduce a separate Bill to require that to be done. On whether that has an implication for the title of the chapter, I do not expect that the title of chapter 3 of the Bill will be hotly debated this Friday night in pubs up and down the country, but perhaps in Greenwich they talk of little else. I think we can live with the title.

I want to conclude with a reflection on the right hon. Gentleman’s overarching argument, which was that the provisions are centralising powers that require local authorities to operate in a certain way. The point has been made by many members of the Committee today that there are good, progressive councils that will, whether in anticipation of the Bill or otherwise, work very well with local voluntary organisations and community groups to extend the opportunities in the Bill to them. However, the Bill is about rights, and about transferring power. It is important that where there is the possibility of some authorities taking a Jurassic approach to the

voluntary sector, shutting them out unfairly and closing their ears to reasonable representations—no doubt there are such authorities—they are not allowed to get away with it. There should be the opportunity for every citizen and every community group to make their case to the local authority. There should be a requirement that they be heard and not unreasonably refused.

The provision bites deliberately on councils that do not engage with their voluntary groups in the way that we all recognise they should. That is no different from the regime that we have required for some time in the private sector, where it is illegal—and, increasingly, strongly punished—to abuse a position of dominance. Sometimes the relationship between local authorities—and indeed Government, since there is a provision that deals with that—on one hand, and community and voluntary groups on the other, is one of dominance. That cannot be helped, given the disparity in the scale of the organisations, but it should not be possible for that dominant position to be readily abused.

That is why we feel very strongly that the rights for voluntary groups should be entrenched, so that they cannot just be confined to a walled garden of funding that the local authority might be tempted to confine them in, and so that they have the right to challenge the provision of services. If that puts us in friendly disagreement with the Local Government Association on some matters, that is not unexpected. It would, of course, want to preserve complete flexibility on the issue, which is, I daresay, why Sir Stephen Bubb said in evidence to the Committee:

“We strongly support those rights, and we hope that Ministers will resist the blandishments of local authorities that we should not have terribly enforceable guidelines and trust them.”—[*Official Report, Localism Public Bill Committee*, 27 January 2011; c. 148, Q35.] The voluntary sector has a point, and the Bill—and the clause in particular—provides it with the protection that it deserves.

Barbara Keeley: The Minister has an unfortunate turn of phrase. He speaks well, but to talk of a “walled garden of funding” is rather peculiar, given the cuts that the voluntary sector is suffering up and down the country. He might want to be a bit more careful about that, given that organisations such as Citizens Advice are being cut; we have had debates on the subject in the House this week.

Greg Clark: Will the hon. Lady give way?

Barbara Keeley: The Minister spoke at some length, and I do not want to hold up the Committee for too long this afternoon. This does not have to be the only Bill on localism in this Parliament. The Minister seems to keep searching for some kind of get-out from his pledge to go through all the powers, one by one, and decide whether they were centralising or not, but saying that the Bill has to last for a decade is not a get-out clause. Each of the powers has to be justified, and I do not feel that the one in question is justified. I will withdraw the amendment, as I did the others, but we must return to the issue on Report, and we will have to be satisfied that there is a better framework that makes it clear that the right is a community right to challenge. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 66 ordered to stand part of the Bill.

Clause 67

TIMING OF EXPRESSIONS OF INTEREST

Barbara Keeley: I beg to move amendment 94, in clause 67, page 49, line 35, leave out subsection (5).

Here we go again. I am afraid this is the same old territory: we are seeking to remove powers from the Secretary of State, or questioning whether they are necessary or centralising. I understand that there is currently a consultation on this power. The Opposition believe, as we have said earlier today, that the processes should be set up locally. The task of taking on the new duty, and issues such as timings, are for local authorities. They are best placed to manage the work, and to set minimum time periods for expressions of interest to be submitted. I do not see that it is localist for the Secretary of State to set the minimum periods.

Greg Clark: I will not detain the Committee too long, as this is a familiar theme, but once again, I think that the amendment illustrates the fact that we might make better progress if we moved beyond regarding a clause as part of a list of Henry VIII powers and centralising powers, and actually looked at the content. The clause is in the category of clauses that deal with how to protect voluntary and community organisations from the hopefully rare situation in which a council was determined to thwart their ambitions to provide services and suggest different ways of doing things.

It is possible to conceive of a council that was not in favour of the challenges using the administrative process to frustrate them, particularly through this timing point. Clearly, there needs to be a window in which to accept expressions of interest. If we did not have a measure such as clause 67, an authority could open the window for expressions of interest at midnight and close it at five minutes past midnight on the same day. That would be a means of thwarting the intention of the Bill. It is therefore reasonable for the Secretary of State, through regulation, to be able to set a minimum window in which voluntary organisations have the opportunity to make challenges. That seems a proportionate and sensible way forward.

In the earlier days of the European Union, when import quotas were being dispensed with, the French Government had a particular exception to the import of video recorders from Japan. They were obliged to have no quota for the import of video recorders and to accept them all. They found an ingenious way of restricting that, as I think my hon. Friend the Member for Croydon Central knows: they required every video recorder to be imported through the town of Poitiers. Presumably, that was in the hope that such a restriction would diminish the flow of the goods into the country and reduce the threat of domestic competition. There is the potential for local authorities to do that and restrict the opportunity so narrowly that it becomes impossible for voluntary organisations to bid. That is what the power in the clause is about. The clause does give power to the Secretary of State, but it is entirely positive, and done in order to safeguard voluntary organisations from local authorities that may not be as progressive as we would like, but which I hope will be few or zero in number.

Nic Dakin: Is it not consistent with the arguments made in previous sittings that we should trust local people and local electorates? In the circumstances

mentioned, which the Minister recognises would be rare or might never happen, why not trust local people to get redress through the ballot box in the appropriate way, as was argued previously?

Greg Clark: The whole Bill, and the Government reforms in this area, are about the transfer of power. We have been clear from the outset that the Bill does not just take power from central Government and give it to local government, but places obligations on councils to take some of their power and invest it in their communities and citizens. It is a clarion call to communities, and we are clear about that. It is a double devolution, and the provision in the clause is an example of it. There is power in local authorities, just as there is in central Government. Just as it is incumbent on us to try to devolve some of our rights and powers to others, so is it right for local authorities to transfer some of their power downwards; the most progressive local authorities do so already. We need a Bill to do that because sometimes, people who have their fingers on the levers of power need a bit of assistance to remove those fingers. I hope that we will not need to have recourse to the legislation, but it is an important safeguard for voluntary groups.

Barbara Keeley: You will be pleased to hear, Mr Amess, that I will be brief. I am not convinced, and I do not think that Labour Members are, either. As with other amendments that we have debated, I will withdraw this amendment. However, we must revisit the subject on Report.

Amendment, by leave, withdrawn.

Clause 67 ordered to stand part of the Bill.

Clause 68

CONSIDERATION OF EXPRESSION OF INTEREST

Barbara Keeley: I beg to move amendment 95, in clause 68, page 50, line 1, leave out subsection (2) and insert—

‘(2) If the relevant authority accepts the expression of interest it must—

- (a) where the expression of interest relates to provision on behalf of the authority of the relevant service, carry out a procurement exercise for that provision;
- (b) where the expression of interest relates only to assisting in the provision of the relevant service, set out how it proposes to involve the relevant body in that provision.’

The Chair: With this it will be convenient to discuss the following: amendment 96, in clause 68, page 50, line 7, leave out subsection (4).

Amendment 97, in clause 68, page 50, line 12, leave out subsections (5) and (6) and insert—

‘(5) A relevant authority must, in considering an expression of interest, consider—

- (a) whether acceptance of the expression of interest would promote or improve the social, economic or environmental well-being of the authority’s area,
- (b) whether acceptance of the expression of interest would promote or improve equality for people who work, study or live in the authority’s area,
- (c) whether acceptance of the expression of interest would disadvantage vulnerable groups in society, and

[The Chair]

- (d) the effect of acceptance of the expression of interest on the continuity of the relevant service.
- (6) A relevant authority must, in carrying out the exercise referred to in subsection (2), consider—
 - (a) how it might promote or improve the social, economic or environmental well-being of the authority's area by means of that exercise,
 - (b) how it might promote or improve equality for people who work, study or live in the authority's area by means of that exercise,
 - (c) the interests of vulnerable groups in society, and
 - (d) the continuity of the relevant service.'

Amendment 98, in clause 68, page 50, line 21, leave out subsection (8).

Amendment 99, in clause 69, page 50, line 30, leave out subsection (3).

Amendment 100, in clause 69, page 50, line 34, leave out from 'decision' to end of line 35.

Amendment 101, in clause 69, page 50, line 39, after 'website', insert

'and in print, both to be in formats easily understandable and useable by communities.'

Barbara Keeley: Amendment 95 aims to create a mechanism whereby community groups or charities that want to make a bid to assist in the provision of a service, but not to run it or deliver it, can do so. That could take a wide range of forms and lead to creative new types of delivery. The amendment would mean that a local authority could set out how it proposes to involve the relevant body in that provision. The amendment would also remove the requirement for a full procurement exercise, which, as we noted, would cost £9,000 each time round, or 5% of the contract value. I see that as a route to greater involvement, and it means that the process would be more likely to be used.

Amendment 96 is on familiar territory: it would remove the power of the Secretary of State to regulate the minimum or maximum time for the local authority to consider an expression of interest. It should be for the local authority to define that locally.

Amendment 97 is important. It would ensure that local authorities consider a range of matters when looking at an expression of interest and carrying out the procurement exercise, rather than just those matters set out in the Bill. The extra considerations would be on whether acceptance of the expression of interest—

The Chair: Order. One or two members of the Committee are indicating that they are having a little difficulty hearing what the hon. Lady is saying. I do not wish to be a nuisance, but would she kindly project her voice a little more? I get the impression that Committee members are anxious to hear her every word.

2 pm

Barbara Keeley: You should report the fact that the acoustics are problematic in this room, Mr Amess, because I have talked a lot this week, and I will lose my voice if I shout.

The extra considerations when looking at an expression of interest would be: does it promote or improve equality for people who work, study or live in that area? Would it

disadvantage vulnerable groups in society? How would it affect the continuity of the public service in question? Those extra considerations in amendment 97 are very important to potential users of services. Improving equality is a statutory duty for local authorities anyway, so it should be expressed. Ensuring that changes do not disadvantage vulnerable groups and considering continuity of service are also important.

If we look at adult social care, which I mentioned earlier, there are two sorts of services that are often contracted out, and will probably be contracted out even more in future. My regional BBC politics show covered that issue at the weekend. It highlighted Wirral borough council, which, it said, proposed contracting out its care work to care homes, rather than having those homes council-run—a fair point. A representative of independent care homes was interviewed, and she talked about the extras that can be included in a nursing care home, and the difference that they make to the quality of life. She talked about providing monthly tea dances and entertainment for the residents—the residents of the home were people suffering from dementia. She also talked about the value of extra training for staff. It is judged that it can be very helpful to have a higher level of training for staff working with people with dementia. Another person talked about being able to offer additional therapies such as art therapy in a day care centre.

Both those people are involved with social care provision, but they made it very clear that they are able to offer those extra activities only at certain fee levels—the point of debate was the fee levels being set locally. The ability to consider the impact of a different service provider that might not offer such additional elements in its care is crucial, because we are talking about vulnerable people—in my example, people with dementia.

For people who have care and support at home—I have already referred to this—continuity of provision is a key element of quality. A number of councils, including my own in Salford, have recently re-tendered their contracts for care at home and have reduced the number of contractors providing that care. For the people using the service, changing provider nearly always means changing carer—changing the person who comes into their home. I know from local coverage and from my casework that an older person may grow used to one care staff member. Changing that person can be seriously disruptive. Those are the reasons why amendment 97 brings consideration of the continuity of service into the procurement exercise.

Amendment 98 is also familiar ground. It removes the power of the Secretary of State to specify the grounds on which the local authority may reject an expression of interest. The local authority has local knowledge, and it is centralising to give that power to the Secretary of State. Taking the decision away from the local authority could, in some cases, cause fragmentation of services. I would be interested to hear how the Minister justifies that. Amendments 99 and 100 remove the power of the Secretary of State to regulate the timing of the process. I wait to hear how the Minister believes that that power is either needed or localist.

Amendment 101, like earlier amendments, requires a local authority to publish documents—in this case, the notification of the process—in print, as well as on its website. It specifies that both formats of publication

should be understandable and usable. That is to make a complex new process easier for local voluntary and community groups. Members will recognise that amendment, because we have seen similar ones.

I hope that the Committee will not send amendment 101 to room 101, if I may put it that way, because it is recommended by Age UK, Mencap, Scope, Sense, the National Autistic Society and the Royal National Institute of Blind People. Those charities exhort us to look at what they call the "right to supported engagement". They say that

"throughout the Bill there is an emphasis on providing information online. However, in the UK 60 per cent of people over the age of 65 have never used the internet. Whilst progress is being made on digital inclusion, there are still a number of barriers to overcome. In the meantime, alternative communication methods should always be provided and information must be accessible to all. As a minimum, information should be made available in hard copy and in a format rendered easily understandable and usable by communities."

We have not seen the light on similar amendments that have gone before, but I hope that we can start to.

The group of amendments is aimed at improving the process of the community right to challenge. Amendment 97 particularly considers the users of services. Amendment 95 would provide a more creative way for community groups or charities to be involved and to assist in service delivery without going through a procurement exercise.

Greg Clark: Again, I am disappointed that some of the amendments fail, perhaps unintentionally, to capture the real essence of the clauses, which is to protect voluntary groups from the behaviour of a council determined to thwart the exercise of the powers. To take the amendments one at a time, I understand the intention, in amendment 95, to offer alternative ways of participation, and to allow partial participation in the provision of a service, rather than a taking over of the whole thing. My understanding is that the Public Contracts Regulations 2006 impose some rather onerous requirements on how that is done, but I will see what can be done to capture the spirit of the amendment, and if something can be done to provide that new kind of route, I will investigate. I have no objection in principle, but the question is whether it would work in practice.

Amendment 96 is a familiar one. It would remove the Secretary of State's power to define the interval between the submission of an expression of interest and a tendering process operating. Again, that power is purely designed for circumstances in which an authority wanted to play fast and loose with the provisions, opening and closing the tendering process in a matter of minutes, thereby excluding people from having the proper opportunity to tender. It is important that people have a reasonable time frame in which to consider bids and challenges.

Fiona Bruce (Congleton) (Con): Is the opposite not also true—that an unduly extended period could effectively stymie the local market and make things extremely difficult for the owner of the land, and for potential bidders who might consider that a detriment when looking to invest?

Greg Clark: My hon. Friend is absolutely right; that is another way that the provisions could be used to the detriment of bidders. If we want to have a sensible

debate about these so-called draconian powers, I cannot imagine any reasonable person not thinking that it would clearly be pro-decentralisation to allow a Secretary of State to stop a local authority from setting a duff period of time, wittingly or unwittingly, in which people can submit a bid. The power does not impede decentralisation.

Nic Dakin: Is not the heart of this difference of opinion that the Minister trusts the Secretary of State, but not local authorities?

Greg Clark: There would be no point in taking these powers to give rights to local organisations if the Secretary of State was to somehow then exercise these rights in such a way as to prevent people from challenging. After introducing the Localism Bill, it would be the oddest use of Parliamentary time imaginable to give local bodies the opportunity to challenge.

The intention is clearly to give rights to local organisations. The obvious purpose of that is to prevent abuse and provide safeguards. You can take the view that all this should be done through the ballot box, but this is almost a new constitutional settlement, saying that when you do have powers you should be subject to challenge and that that should happen in a reasonable way.

Gavin Barwell (Croydon Central) (Con): My right hon. Friend has taken a very good approach to each of these measures in seeking to justify why the powers are required. Can I clarify one point? If I understand him correctly, he says that the Secretary of State would not intend automatically to use all these powers to specify to every local authority what it has to do. They are reserve powers in case local authorities seek to frustrate the aims of the Bill. Is that correct?

Greg Clark: Not entirely. Before the provisions come into effect, we intend to set out a minimum period for expressing interest in a service. We will put that out for consultation; in fact, we invite suggestions about that in the consultation that is already there. So there will be a general minimum and maximum to deal with the point made by my hon. Friend the Member for Congleton. But within that range, which is designed to prevent abuse, it will be up to local authorities to set out a scheme that meets their own needs.

Barbara Keeley: The Minister says that this is a new constitutional settlement. I go back to our debates last week. We have missed an opportunity for a codification plan. The Bill introduces new commissioning, new procurement processes and new forms of direct democracy, and we have missed an opportunity to spell out and specify the relationships between central and local government. It would have been much better if that had accompanied the Bill.

Greg Clark: The Public Administration Committee is currently reflecting on this matter and will make recommendations. All parties will see what is proposed and reflect on that, but we cannot reflect that in a Bill before it has been put forward.

Jack Dromey: The Minister has just referred to protection of voluntary groups against councils on the one hand, and the importance of avoiding the danger of abuse on the other. Can I press him again on this point in terms of employee self-interest? There is a long and honourable tradition of employees bidding to provide the services that they are employed by, such as Greenwich Leisure back in the 1980s at the time of the compulsory competitive tendering regime. On the issue of potential abuse by council employees now, I pressed the Minister earlier and gave the example of a major commercial company.

Let us anonymise or fictionalise this. In the construction industry, there are many reputable operators such as Bob the builder. But there also some dodgy dealers. Under the provisions of the Bill, Del Boy could meet with a couple of council employees from building maintenance in the Nag's Head and encourage them to bid for the work they currently do. There are no safeguards in the Bill. There is neither a requirement for there to be a declaration of self-interest by employees nor the lock that we would wish to introduce in respect of all those involved in providing the services who are part of the expression of self-interest. Does the Minister not recognise that he is leaving room for abuse by a very small number of employees pursuing narrow self-interest?

Greg Clark: No, I do not. I hoped that we had moved on from Bulky Bob, but clearly this is a firm that will inform our proceedings over the next few weeks. The provisions in the Bill go beyond even what is there for current procurement exercises. In the event of an expression of interest, a procurement exercise would take place. It is part of the existing procurement process and has all the safeguards that the hon. Gentleman would rightly seek. In addition, subsection (5) states:

"A relevant authority must, in considering an expression of interest, consider whether acceptance of the expression of interest would promote or improve the social, economic or environmental well-being of the authority's area."

Another provision objected to by Opposition Front Benchers allows the Secretary of State to specify other reasons why it may not be appropriate even to consider an expression of interest, and part of the consultation that has gone out to the LGA and others will invite suggestions as to what should be on that list.

There could not be a better-protected process; it has all the protections of the existing procurement process and then some, so the hon. Member for Birmingham, Erdington, should be content that Bulky Bob will make progress through the system only if it is a reputable firm.

2.15 pm

Amendment 97 considers the equalities impact of an expression of interest and the right to challenge. Everybody, on both sides of the House, understands that it is important for public bodies to pay regard to their duty to promote equality and to respect that in their arrangements. However, the right way to do that is through legislation that applies across the board—to local government and central Government. If we start to include amateur versions in every Bill that goes through Parliament, there will be inconsistent definitions and a minefield of different regulations, which is precisely what local authorities and voluntary groups complain about. It takes increasingly long and costs an increasing

amount of money for them to go through all the well-intentioned regulations and legislation that they have.

Equality is an important principle, and we have legislation for it on the statute book. The Equality Act 2010 already places a duty on public service providers not to discriminate against, harass or victimise people who require or use services. When we rightly place such obligations on authorities, we should do it consistently across the piece, and not try to do it in an amateur way in every clause that goes through the House. Our opposition to the amendment in no way diminishes the importance of those issues. They should be carried through; I am sure that the hon. Member for Birmingham, Erdington, in his previous life, would have wanted this to be clear and to cross all Government legislation.

Amendments 98, 99 and 100 are, again, disappointing, and I hope that they are inadvertent in what they reveal about Opposition Front Benchers' thinking. They would take away some of the safeguards that stop any local authorities from frustrating the process, if they are minded to do so.

Amendment 98 removes the Secretary of State's ability to set out the reasons why a bid may be rejected. If it were entirely down to local authorities to cook up any reason whatever to reject a bid, that would be a major loophole. It would be a major way in which the process could be declared null and void, because authorities could produce a local list that was so comprehensive that no one would get a look-in. The power allows the reasons to be specified.

Amendment 99 governs a period of time, and it states that local authorities must make a decision on an expression of interest in the time specified by the Secretary of State. Obviously, if a local authority decided that it would take three years to make a decision on an expression of interest, that would be a naked abuse of the system. This power prevents that, and removing it would make this whole area of the Bill, in effect, null and void.

Amendment 100 intends to remove the requirement even to notify decisions in a time specified by the Secretary of State. Without that, there would be no obligation on a local authority's part even to tell a respondent, or an applicant, whether they had been successful. Clearly, a local authority should be obliged to do that. The clause is simple, and it is entirely in the spirit of making this work. Although this may be inadvertent on the part of Opposition Front Benchers, removing the requirement would destroy the implications of the Bill.

Finally, amendment 101 requires a print version as well as a website publication. As with the equalities duty, if we are going to place requirements on local authority publicity, we should do so in a consistent way, and not require local authority legal officers to take a magnifying glass and go through every piece of legislation to see what different requirements there are. There clearly should be a requirement on local authorities to communicate with people, especially those who might not have access to websites. That should be a general obligation effected by the other publicity codes available.

Barbara Keeley: A simple question: where is that specified? If it were specified, I would be happy in respect of all the amendments that we are putting

forward on behalf of the group of charities. The Minister heard me say that a large proportion of people over 65 cannot access the internet and they are being left out. They should not be. As people live into their 70s and 80s or have certain disabilities, they should be included in such matters.

The other point is about why his Department is making publications related to the Bill available only online. It is hardly showing the way to local authorities if a central Government Department such as his publishes documents related to this Bill only online.

Greg Clark: There is a publicity code governing local authorities. I will undertake to ensure that the concerns that the hon. Lady expresses are addressed—that information made available by local authorities should be accessible to people across the community. That is a reasonable request; an amendment to the Bill is not the right way to prosecute it. When it comes to my own Department, every document we published in recent weeks is available in print form.

Barbara Keeley: The website says “online only”.

Greg Clark: I am grateful for that information and I will have that corrected. That is certainly not the intention. I hope that I have addressed all the points that have been raised.

Mr Ward: I would like some clarification. First, I would like some guidance from you, Mr Amess. My comments straddle amendments to clauses 68 and 69, so is it appropriate that I should speak now?

The Chair: Yes.

Mr Ward: I want to comment on something that does not seem to be in the Bill, and I would have been critical had it been; I suppose I am pleased. It is again to do with the prescription. We are told that a lot of the prescription seeks to stop a local authority from nullifying the localism intentions of the Bill. I understand that.

In this case, on the question of the authority's rejecting an expression of interest, it seems very vague. Clause 68(5) refers to a set of criteria for rejecting or accepting on the basis of

“social, economic or environmental well-being of the authority's area”.

That is so woolly and unclear. Under clause 69(4)(b), all the authority has to do is give its reasons. The reason could be, “We do not think it does meet those criteria.” If one is going into the business of prescription, that is pretty poor prescription. It allows an authority to say, “In our view, it is not.” There seems to be no specific right of appeal. I am not sure whether that is covered by the reference to the Secretary of State.

My concern is that when some expressions of interest come through, there may be a bit of cherry-picking. Many local authority services involve cross-subsidy, particularly where charging takes place and where one part subsidises another. It could be that expressions of interest come in for that bit of the service that is

attractive to the organisation, but it means there is an economic disadvantage to the local authority if it loses that part.

Greg Clark: I am grateful for the points raised by my hon. Friend the Member for Bradford East. Incidentally, I am advised that the documents in relation to the Bill are available in hard copy. That is flagged on the website, but we will double check to make sure that it is absolutely clear.

My hon. Friend's point is reasonable. The debate has focused on whether there should be strong powers to prevent a council that is determined to thwart this process from doing so, versus the Labour party's view—I am not sure whether it is deliberate—that councils should be given free rein to do that should they want to.

A balance must be struck, but once an authority has considered an expression of interest, we have not said that it must accept it and trigger a procurement exercise. Councils have a broad range of reasons on which to reflect, including the point made by my hon. Friend the Member for Bradford East, and by Labour Members, that if an organisation is integrated with different services, and taking one slice out of it would make the rest no longer viable, that would be a reason not to proceed with the expression of interest. There should be a requirement for such things to be reasonably considered.

It is possible to go further, and we are consulting on what reasons the Secretary of State can say would not be valid to reject the bid. It is right and consistent with trusting authorities with the details of such matters to have safeguards that stop them from blatantly abusing the system. Such safeguards, however, do not intend to prescribe in such fine detail that the authorities have no chance to make a reasonable response to the proposals. We are taking a proportionate approach, and I hope that it will command the support of voluntary organisations and local governments in bringing the two interests together.

Barbara Keeley: We have had a number of exchanges, and I am pleased that the Minister has agreed to look at a number of points. As with the other provisions, we will return to the whole issue on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Barbara Keeley: I beg to move amendment 118, in clause 68, page 50, line 20, at end insert—

“(7A) If a contract for service provision is awarded to a relevant body which includes employees of the relevant authority, the former employees of the relevant authority holding paid employment with the relevant body are not subject to the provisions of section 80 of the Local Government Act 1972.”

We do not need to spend long on this matter, but I would like to keep the Minister's eye on it. The amendment aims to draw attention to a point that I raised last Thursday. As I told the Minister, the Leader of House has stated that the Localism Bill might provide the opportunity to have a debate about eligibility to be a local councillor, and for the Government to see if they could

“remove disqualifications for which there are no apparent reasons.”—
[Official Report, 13 January 2011; Vol. 521, c. 444.]

It seemed that that provided the opportunity to table an amendment.

[Barbara Keeley]

As I mentioned, the Leader of the House's statement was a response to a question asked by my hon. Friend the Member for Wrexham (Ian Lucas). He felt that people were being disqualified from being councillors and standing for election if they were in low-paid and perhaps even part-time positions from which they had no influence, even though such a role would not cause a particular clash with their employment. My hon. Friend used the example of lollipop ladies and teaching assistants.

Under the clauses that we have been discussing, two or more council employees may bid to run a service. If their bid is successful, the service will be run outside the council, so former senior, well-paid employees who were previously disqualified could find themselves standing for election even though they were being paid for a contract with the same public money as before. Under the Bill, there could be one position for teaching assistants or staff on school crossing patrols, who would remain disqualified, while more senior people involved in a new type of organisation could stand for election. Does the Minister propose to do anything about that anomaly in line with the comments of the Leader of the House in response to the question asked by my hon. Friend the Member for Wrexham?

2.30 pm

Greg Clark: The thinking behind the amendment had been the cause of some puzzlement. We will need to look at the hon. Lady's question about whether the current disqualification rules need to be changed and come back to it on Report. I do not want to raise her hopes, because there are reasons for the current regime, but I undertook to review the matter properly and I will share the results of that review and write to her before Report.

Barbara Keeley: On that basis, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 68 ordered to stand part of the Bill.

Clause 69 ordered to stand part of the Bill.

Clause 70

SUPPLEMENTARY

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

Barbara Keeley: I will be brief, Mr Amess. This is entirely about the powers of the Secretary of State. Just to be consistent, I have to say that Labour Members are not comfortable with those powers and not comfortable with this clause, so we would like to vote on it.

Greg Clark: I understand the hon. Lady's point. I have made some statements about the provisions to which Labour Members object, some of which, as I hope has become apparent during the day, are genuinely to protect local groups from the behaviour of a reluctant council. I invite all members on both sides of the Committee to reflect on our intent over the next few days and to give some thought to whether there are any

procedures that would find favour because I would be very happy to consider them. Independent of that, we will make our own reflections and return to them later in the Bill's passage.

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

The Committee divided: Ayes 14, Noes 8.

Division No. 21]

AYES

Barwell, Gavin
Bruce, Fiona
Cairns, Alun
Clark, rh Greg
Gilbert, Stephen
Howell, John
Lewis, Brandon

Morris, James
Neill, Robert
Smith, Henry
Stewart, Iain
Stunell, Andrew
Ward, Mr David
Wiggin, Bill

NOES

Dakin, Nic
Dromey, Jack
Elliott, Julie
Keeley, Barbara

Mearns, Ian
Raynsford, rh Mr Nick
Reynolds, Jonathan
Seabeck, Allison

Question accordingly agreed to.

Clause 70 ordered to stand part of the Bill.

Clause 71

LIST OF ASSETS OF COMMUNITY VALUE

Alison Seabeck (Plymouth, Moor View) (Lab): I beg to move amendment 105, in clause 71, page 51, line 17, leave out subsections (3) and (4) and insert—

'(3) Where land is included in a local authority's list of assets of community value the entry for that land is to be removed from the list after a period to be specified by the appropriate authority, by regulations, of not less than five years.'

It is a pleasure to serve with you in the Chair, Mr Amess. This is my first Front-Bench speech in the Committee, and although I have the benefit of following my hon. Friends the Members for Worsley and Eccles South and for Birmingham, Erdington, I hope that you will be patient with me—I will not say gentle, but patient—should I stray from the correct format during our proceedings.

Before we come to the substance of the amendment, I would like to put on record that Labour Members welcome the principle behind chapter 4 of part 4 of the Bill, as do all of us in the room, so I hope that we can take these provisions through as consensually as possible and with an open and genuine debate. I hope that Ministers will, when we make a case supported by evidence, take away any suggestions for improvement and changes in the spirit in which they will be offered. These proposals are fundamentally a development of Labour's programme of empowering local communities to take over local assets, which was brought forward in the previous Parliament but, like most legislation, could be built on.

Amendment 105 would clarify clause 71, which we believe to be incoherent and confusing in subsections (3) and (4), with respect to the length of time for which land should remain on an authority's list of land of community value. Subsection (3) states that land should remain on the list for five years, while subsection (4)

states that the Secretary of State may amend that period of time as he sees fit, so what are the aims of those subsections? Our amendment is designed to probe and specifies a time so that we can draw out some of the arguments and concerns that we and others have. While we can see why it would be desirable for local authorities to adjust the time that land should be on their lists to tailor the provisions of this chapter of the Bill to local needs, we are concerned that the Government, rather than committing fully to localism, have decided to grant the ultimate power to the Secretary of State.

The Secretary of State's powers would effectively allow him to control what happens locally by changing the length of time before land is deleted from the list. We believe that that is wrong. All citizens should be able to come together with their communities to take up that right. The Secretary of State ought not to be able to frustrate the good intentions of local authority groups by messing with the time that an asset can be retained on the list. The provisions also fail to provide any certainty for businesses, but their concerns are in a different area, so I will return to some of them later in the debate.

I do not believe that the Minister of State or any of his colleagues would want a community group in their constituency to be frustrated if a Secretary of State were to try to block the effect of the clause by removing land from the list too quickly. We support such flexibility, but we are worried that it could serve to frustrate the main purpose of the chapter as a whole.

The amendment proposes that five years should be the statutory minimum length of time for land to be included on the list of land of community value. I am sure that Ministers will question why we have set an arbitrary time limit, but it was to ensure that we could have a debate that would enable us to understand exactly what the Government intend. During our debate on clause 67, the Minister talked about avoiding local authorities thwarting expressions of interest. Does not the same argument apply here? Perhaps we need to consider applying that principle to clause 71 and apply a minimum period. There is a range of linked issues to consider, but I would like to raise some of them in the clause stand part debate.

The Parliamentary Under-Secretary of State for Communities and Local Government (Andrew Stunell): It is good to be back in action under your chairmanship, Mr Amess, and I welcome the hon. Member for Plymouth, Moor View to her Front-Bench role. I strongly welcome her support on behalf of the Opposition for the principles behind the chapter and for the aims that we are hoping to achieve. I assure her that I stand ready to listen to suggestions that would help to improve it.

Clause 71 sets out the principle of having a list and starts to set out the way in which that should be done. Amendment 105 addresses the perennial concern of Opposition Members when considering the Bill: the Secretary of State, or a future one, might get up to no good. I want to set that to one side for a moment and just talk about what subsection (3) does and why.

The Bill already provides that assets must be removed from the list after five years. Why? That is because unlike for a heritage listing, which is obvious for something of enduring value, it is not obvious that something of

community value will endure for decades. For example, if a pub was listed as a community asset but another pub then opened in the village, it might no longer be appropriate for that particular pub to be on the list. If service provision is made elsewhere in the meantime, that might make it unnecessary for something to stay a protected community asset.

Fiona Bruce: Will the Minister clarify why a right of appeal is not included, whether on initial listing or during the course of that five years?

Andrew Stunell: I am not sure if this is a point of order, Mr Amess, but I wear a hearing aid. With the hearing aid loop, I can hear Members perfectly well when they are in speaking mode, but I sometimes miss interventions.

The Chair: Order. The Minister has now told everyone the difficulties he has. I had not noticed the hon. Gentleman's situation until he served on this Bill. Now that the Committee has heard of the difficulties, I am sure that Members will work with the Minister.

Andrew Stunell: I have not missed a word that the hon. Member for Worsley and Eccles South has said because the loop works perfectly. It is when there is an intervention that I am at a bit of loss for a moment.

I can say to the hon. Member for Congleton that we shall come to other clauses in this chapter that deal with the process of challenging a list, of accepting a nomination and so on. I will be happy to respond to any concerns she has at that point.

The Bill says that the listing will be for a five-year period. However, it is perfectly possible for a listing to be reconsidered and immediately re-entered on the list at the conclusion of the five-year period. It is not a case of "one strike and you're out"; there is a review.

Mr Raynsford: I hear what the Minister is saying, but I cannot understand why the Government do not accept a provision that says it is for the local authority to decide whether the asset should continue to be listed. Leave it to the local authority, rather than providing this highly centralised prescriptive framework.

Andrew Stunell: I believe that the right hon. Gentleman has misunderstood what is in the Bill. It will be for the local authority to follow the procedures for the original listing when it comes to the end of the five-year period. Subsection (4) relates to the five years; it is about providing an opportunity for a practical review to be had about what that period should be. The hon. Member for Plymouth, Moor View indicated that there was no magic about five years, but five years is the period that appears in the Bill. To get into the realm of speculation, if, at the end of five years, assets were universally taken on for a second period, it might be expedient to have an asset list that lasts for 10 years.

To pick up the point about whether this should be something that a local authority could do or that should be set at a national level—

Alison Seabeck: I talked about the fact that we had arbitrarily picked five years. There must be some logic behind the choice of that five-year period, given that the Government spent months preparing the Bill.

Andrew Stunell: We wanted the period to be long enough to be meaningful, but not so long that it was rendered irrelevant by developments that had taken place in the meantime—perhaps developments literally. We should bear in mind that if other provisions in the Bill come into force, that will be in an era of neighbourhood planning, so provisions in a neighbourhood or local plan might make the original listing inappropriate. We are ready to hear views about that. A current consultation is asking multiple questions relating to many of these issues and I would certainly solicit responses to that consultation.

Mr Raynsford: The Minister will recognise that there will be a huge variation. Some assets of community value will continue to be as such for many years. I can envisage, for example, that if there was a small local theatre that a community regarded as hugely important to a community, there would be a desire for the listing to continue for much longer than five years. I cannot understand why the Government do not leave the decision to the local authority, rather than impose an arbitrary figure. Does not the Minister realise the irritation this has caused the Local Government Association? Its briefing states clearly that it

“will be supporting amendments to this Chapter which will decrease Whitehall’s control and increase the ability for these important decisions to be made at the most appropriate local level.”

2.45 pm

Andrew Stunell: The five-year period is not completely arbitrary. I described the reasons for having a period that is sufficiently long to be meaningful but does not leave an inappropriate legacy. It is exactly the same as the community right to buy interval of time in Scotland. The right hon. Gentleman might want to reflect on whether we should have lists of assets of community value that are run in different ways in different parts of the country. I put it to him that, as with the listing of buildings for heritage reasons, there ought to be some national universal standard, rather than a completely locally-based description of what those standards are, particularly because other implications flow from that relating to possible compensation schemes, which we shall come on to.

As I said in response to the hon. Lady the Member for Plymouth, Moor View, I look forward to seeing the consultation responses. I shall also listen carefully to points made in this debate. However, I believe that the Bill in its present form is appropriate. It sets a proportionate and sensible time frame as a starter, and it leaves in place a mechanism for looking at that in the light of practical experience over the years. I therefore hope that the hon. Lady, having tested her argument, will withdraw her amendment.

Alison Seabeck: It was interesting to hear the Minister’s response, which confirms the centralist tendencies implicit in this clause. I have had a quick look at the consultation,

which we only got on Friday. Again, I think that Opposition Members would have been better informed if the consultation had taken place in advance of the Bill’s publication. However, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Alison Seabeck: I beg to move amendment 104, in clause 71, page 52, line 3, at end insert—

‘(7) A list of assets of community value shall not include land or assets that are Operational Land.

(8) In this section “Operational Land” means—

(a) in relation to statutory undertakers—

(i) land which is used for the purpose of carrying on their undertaking, and

(ii) land in which an interest is held for that purpose;

(b) in relation to public bodies that are not statutory undertakers, land which is used for the purpose of carrying on their functions and duties.’

The amendment arises out of concerns raised with Opposition Front Benchers by transport operators, although I am sure that they have raised similar concerns with Ministers in both the Department for Communities and Local Government and the Department for Transport. They are worried that the powers in this clause might not provide the necessary protection for statutory providers of transport, so it would be helpful for the Committee to know what discussions have taken place between the two Departments about the implications of this provision. Perhaps the Minister will tell us whether his officials have been speaking to officials in the Department for Transport.

We are not yet at the stage of debating the planning elements of this Bill, but I have concerns that the provisions in this chapter might be subverted by certain groups following planning applications. I have no doubt that my hon. Friend the Member for Birmingham, Erdington will want to explore this point further if our concerns are not allayed by the Minister’s response to this debate. I would not want to see these powers damaged in the eyes of the public if they are used to prevent necessary infrastructure projects instead of to turn land of community value into valuable assets within a community. For example, how would the Secretary of State for Transport feel if the powers were used to list land along the route of High Speed 2 as land of community value?

Perhaps the Minister will clarify whether schemes of national importance fall outside the remit of this clause. Will the national planning policy framework make that clear? If so, is it not a shame that, yet again, we are being asked to take decisions on clauses without access to all the information we need? There are serious implications for passenger transport executives, as well as other owners of land. Depending on as yet unpublished policies and secondary legislation, their ability to carry out their functions could be affected.

Integrated transport authorities and PTEs are extremely concerned that they could easily find their landholdings subject to these provisions. They have highlighted the possibility that their operational land, such as bus depots, tramways and other facilities not obviously covered by other legislation, such as Railways Acts, could be affected. Equally, sites that might have possibilities for future development to support transport, particularly in a

rural area, might be listed by a community group as an attempt to block such a use. Real concerns were expressed by witnesses that the Bill as it stands will not prevent the use of these powers maliciously to derail development.

Adrian Penfold from British Land told us:

"In the review that I referred to, one of the things that we looked at was a series of tank traps post-planning permission, and it seems that the designation of land of community value, if not dealt with properly, is potentially another tank trap that can be abused in order to stop development at a very late stage."—[*Official Report, Localism Public Bill Committee*, 25 January 2011; c. 92, Q158.]

Network Rail also expressed worries about this clause and wanted to see land and buildings owned by Network Rail for its statutory undertaking not designated as "land of community value" and therefore excluded from the listing process. It is important that the powers in the Bill are realised in a way that strengthens the overall sustainability of a community and that they cannot be used for malicious purposes, which I am sure that the Minister would not have intended.

Will the Minister set out how the clause provides the necessary protection against malicious listings? Does he have an answer to the concerns touched on in the consultation paper on restricted covenants? He sets out in that paper that certain types of buildings may have covenants placed on them by an owner that may limit how the property may be used once it has been sold—for example a pub, once sold, may not be used as a pub. Such actions can deprive communities of local assets, so we would welcome any further information that he can give us on that issue.

When providing for further regulations, do Ministers intend to give protection in specific cases beyond those listed in the consultation document, including for residential property except where the accommodation is tied to an asset of community value or integral to the working of the asset? I understand the example given of a pub or shop with a flat over it, but do tied cottages fall into this category?

I hope the Minister will also confirm that land and buildings such as trust ports, ancient monuments, statutory allotments and school playing fields are likely to be in the regulations—this is the same old record going round, but sadly we have not seen them. Will the Minister give an undertaking that the eventual regulations could exclude operational land from the definition of land of community value? If he cannot give us full and satisfactory answers, I am afraid that we will press the amendment to a Division.

Andrew Stunell: I thought that amendment 104 was a probing amendment. I am sure that the hon. Lady will not mind me saying that, for all practical purposes, her amendment would undermine the provision entirely because it refers to public bodies that are "not statutory undertakers" and

"land which is used for the purpose of carrying on their functions and duties."

However, I am certainly ready to give the Committee as good an account as I can in response to her questions.

Some of the questions about what we might call vexatious applications, as well as those that are designed to achieve secondary objectives, are covered in other clauses in this chapter. There is a procedure on nomination,

a notice of inclusion and a review of decisions to include land on a list, while there will also be lists of assets that are listed and of assets for which listing has been refused. The hon. Lady may want raise some of those points in more detail when we discuss subsequent clauses, but clause 71 simply sets the process in train. The subsequent clauses provide the framework for addressing the points that she raised. She makes the fair point that somebody might attempt to achieve the listing of a section of the M25 with a view to closing it down to reduce noise levels, but I think she will find that subsequent clauses would prevent local authorities from getting to the point of listing that—it would appear on the list of claims that had been refused.

We need to come back to what the proposal is about in the first place: giving communities the opportunity to say, "Hang on a minute. You are changing our neighbourhood and taking away our facilities." The problem might be in a rural area, such as the loss of the pub, post office, chemist or local shop. People often never get the chance to stop that it happening, or indeed to provide a better service in the same facility. That is what clause 71 initiates, and it is what the community value option provides for a neighbourhood in an urban or a rural area. We will look to make improvements to the provisions, if they can be found, but something that limits the operation at the application point is not the way to go. The way to ensure that vexatious claims do not find their way on to the register is provided not in clause 71, but in the latter clauses that control the problem.

We all know that there have been plenty of closures of public sector facilities. My brief mentions that the number of public libraries in England fell from 3,066 in 1998—obviously that date has been picked at random—to 2,820 in October. Some 246 libraries were lost during that period. On many occasions, the local community felt that they were excluded from having a voice or an effective way of challenging what happens next.

We recognise that it is not always appropriate for an asset to be listed and the exact definitions, as the hon. Lady has quite rightly pointed out, will be determined in regulations. That forms part of the consultation that is now in play. What types of land or assets should be excluded? We propose that the regulations list the types of buildings and land that do not constitute assets of community value by their own definition and that should, therefore, be excluded from the listing process. I speculate that the M25 would probably be included in that.

We are consulting on the factors that local authorities might be required to consider when deciding whether an asset meets the definition. One can imagine all sorts of different circumstances but, for instance, the community might nominate a piece of Network Rail land that had—this would be the aim of the listing—a community centre or a social club on it. The local authority would have to decide whether that met the definition of land of community value. If so, and if Network Rail subsequently decided to sell that land as part of a much larger parcel of land, the community might choose to bid for the whole parcel. A whole set of complex circumstances needs to be taken into account, but our aim at every step is to make sure, as in the example I gave, that the social club or the youth centre that happens to be on somebody's land is protected.

Mr Raynsford: The hon. Gentleman took a bit of a risk when he referred to libraries as a service that had been subject to a certain number of closures in the past. Judging by what is expected in the future, the threat to libraries might now be much greater. Let me specifically pose to him the problem that my hon. Friend the Member for Lewisham East—she cannot be here this afternoon because she is at a funeral—highlighted during this morning's sitting: the proposal to replace a library in the London borough of Lewisham, which she represents, with a facility on the other side of a railway track, which happens to be in the London borough of Greenwich, which I represent. I cannot see any arrangement in these provisions to deal with an asset of community value that might straddle two local authority boundaries. Railway lines often constitute boundaries, so perhaps the hon. Member will inform us what happens when an asset involves two local authorities.

3 pm

Andrew Stunell: I will certainly take a look at the right hon. Gentleman's point. I assume there must be many listed heritage buildings in that category as well, and I am sure that somewhere in the bowels of the bureaucracy in Whitehall there is a way of dealing with these things. If by some chance we have not included a mechanism, I am sure we will give it some consideration.

Mr Raynsford: I am grateful to the hon. Gentleman, but that really is not adequate. This is his Bill. I have identified a possible lacuna—an absence of a provision for dealing with such circumstances—so we really are owed more than a willingness to have a look in the bowels of Whitehall to see whether there is some kind of mechanism available. We are here to scrutinise the Bill and we expect to hear from the Minister what will be done to deal with such circumstances—either now, or certainly in the very near future.

Andrew Stunell: I never have any difficulty hearing the hon. Gentleman's interventions. I was disappointed that he did not speak a little bit longer because that might have allowed me to answer his question in more detail.

Mr Raynsford: I will certainly do my best, as I can see a great deal of activity not in the bowels of Whitehall, but on what might be described as the bench of Whitehall. I hope that the Minister will get the necessary guidance, but I genuinely think this is a serious issue. However, I know that interventions are supposed to be brief, so I wonder whether any other Member wishes to make an observation about assets of community value that cross boundaries to provide some relief to the Minister?

Andrew Stunell: I apologise for laughing, but I think I can breach the confidence of the message that has been passed to me—it says “offer to write”.

Alison Seabeck: I look forward to receiving that reply, partly because I intended to raise such a point in relation to waterways when we debate a later clause, so we might well come back to that if we do not receive an answer in the intervening period.

There are issues that the transport operators will not be happy about. The idea of a social club on being listed on a piece of transport land for which Network Rail may have a future transport use could significantly restrict what it is able to do on that land, so I think there should be further discussion. The Minister did not answer my question about whether he has received the view of the Department for Transport about the concerns raised by PTEs and others.

Andrew Stunell: Perhaps I should make it clear to the hon. Lady that we cannot present legislation to the House unless other Government Departments are content with what we have proposed, so I can reassure her on that particular point. However, she also raised points to which she wishes to return when we consider subsequent clauses, so perhaps I may respond in more detail at that point.

Alison Seabeck: I am not entirely happy with the Minister's response, so I would like to press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 14.

Division No. 22]

AYES

Dakin, Nic
Dromey, Jack
Elliott, Julie
Keeley, Barbara

Mearns, Ian
Raynsford, rh Mr Nick
Reynolds, Jonathan
Seabeck, Alison

NOES

Barwell, Gavin
Bruce, Fiona
Cairns, Alun
Clark, rh Greg
Gilbert, Stephen
Howell, John
Lewis, Brandon

Morris, James
Neill, Robert
Smith, Henry
Stewart, Iain
Stunell, Andrew
Ward, Mr David
Wiggin, Bill

Question accordingly negatived.

Clause 71 ordered to stand part of the Bill.

Clause 72

LAND OF COMMUNITY VALUE

Mr Ward: I beg to move amendment 122, in clause 72, page 52, line 7, at end insert

‘, except that land of community value may only be land owned by a relevant public authority.’.

Some 10 or 11 years ago, we had a big school reorganisation in Bradford in which we moved from a three-tier to a two-tier system. Part of that involved the disposal of 60 former middle schools—we expanded the first schools and the upper schools, as we called them. How pleased I am that the Bill was not in force at that time, because we had to take a fairly hard stance as we desperately needed the money from the disposal of the school sites. We managed to reach all-party agreement on the protocol for the disposals, but the process was very difficult because, of course, we were bombarded by local community groups that wanted to take possession—

not at full market value, of course—of those local community assets. We would have loved to have done that, but we desperately needed some £190 million to fund the school building programme. I have some understanding of the problems and difficult decisions that arise when community assets come up for disposal.

I talked to my colleagues in Bradford last night about the budget and so on. I told them that we have really crucial matters to decide, such as whether prisoners have the vote, but they are simply dealing with everyday issues such as whether to close children's homes. They are therefore in a far less fortunate position than I am. Decisions on community assets are crucial, because a certain degree of emotion is attached to them.

The gist of the amendment is that it is unfair for private assets to be included on the list without the permission of those assets' owners. If the amendment were accepted, it would need to be accompanied by a definition—perhaps in an additional subsection or through regulations made by an appropriate authority—but its purpose is to exclude private individuals and private businesses from the measures. I have not asked the Library to carry out a sweep of the history of this, but if I had, it would surely have gone back to Magna Carta—or even before. Whether in Magna Carta, the United States constitution, or European human rights legislation, I am sure that there are consistent references throughout history to the importance of private property rights, and indeed to the state having an obligation to protect them.

The Parliamentary Under-Secretary of State for Communities and Local Government (Robert Neill): I understand and respect my hon. Friend's point. However, does he accept that we are discussing not the state's ability to take over private property rights, but merely the listing of an asset? As the Bill points out, the community would subsequently have the opportunity—the breathing space—to get together so that it had the chance to make a bid. Often, because of the unequal economic circumstances of some business owners, that is not possible—a good example is the case of public houses. If the state was to take over the asset, my hon. Friend's case would be stronger, but that is not the intention of the clause.

Mr Ward: I half accept the Minister's comments, in that we are talking about listing property and not disposing of it. Frankly, however, if my property is put on a list, that is an infringement of my rights, and I believe I have the damn right to say what list my property goes on. The measure creates an infringement and, beyond that, it is anti-competitive from the point of view of small businesses. I believe that it is likely to put off a potential seller, even if selling the property might be their preference. Listing might also devalue the property itself, and that will be even more likely if there is any lack of clarity about the moratorium.

In many such instances, the listing will be unnecessary. When members of a local community go in the local pub or post office, do they not know when the property will come on to the market? Do they not talk to the person behind the bar, the postmistress, or the postmaster? Do they not know when community assets are likely to come up for sale and then engage in conversation with not only the owner, but with members of the community about what they would do in the case of a sale? The provision creates red tape and might impede business activity.

I understand the clause's purpose in relation to post office closures. It is important that high streets and village communities are kept thriving and alive by not doing away with those key amenities that often bring such communities together. However, a post office or a pub is not a community asset; it is a private business. It might be of value to the community, but it is not a community asset. We must remember that pubs, post offices and small shops are micro-businesses. At present, they are going through a pretty difficult time. They are affected by the recession and the bad weather, and the VAT increase might have had an impact, too. Such businesses have enough on their plates without being on a list when they have no say about whether their inclusion.

Robert Neill: May I put a proposition to my hon. Friend? I am normally the first person to be sympathetic to the circumstances that businesses face, but how does one deal with the situation that has occurred with the Broomwood public house in Sevenoaks way in my constituency, which is the only public house in a large suburban estate? The establishment has been bought not by one of the reputable operators, but by an absentee landlord with no connection to the community. He is seeking to change its use so that he can speculatively develop it as a McDonald's. The pub has been deliberately run down over a number of years. In such circumstances, it is difficult to say that it is a struggling small business, as the suspicion must be that there has been a deliberate attempt to make a gain through a sale for development. Surely it is right that the community should have some protection in such circumstances, and that is the purpose of the listing clause.

3.15 pm

Mr Ward: We come back to the basic right of people to do what they wish with their properties. I would also argue that we have planning legislation that covers change of use. It would be for a planning authority to approve or not approve a change of use, according to whether it deemed the change appropriate. There is also the belt-and-braces approach taken with regard to other measures that we will discuss later. One would have thought that neighbourhood plans could incorporate guidance on what would be an acceptable use of a property in an area.

In conclusion, I have tried to make, and hopefully made, the point that we are talking about an infringement of personal property rights. There is a danger that small business people will be put off opening a business if they think that when they want to dispose of it—two, three, four or five years down the line—it will be included by the community on a list that may affect its resale value. I am also concerned that pressure may be put on the owners of properties by a community. The free, unfettered right of an individual to say, "This is what I choose to do with my personal property" would be compromised by the pressure put on that individual by members of the local community. The owners of the property have a right to be protected from that pressure.

Mr Raynsford: This is a most interesting debate, because we are beginning to see some cracks in the coalition. It is a very surprising crack, because what we are hearing is the authentic voice of 19th century economic

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liberalism saying that we should have absolute freedom to do whatever we like with our property. Against that, we see those pinkos from the Conservative party—

Robert Neill: Would the right hon. Gentleman perhaps adopt the formulation of his hon. Friend the Member for Birmingham, Erdington, and settle for Macmillanite?

Mr Raynsford: I will not adopt the formulation used by my hon. Friend the Member for Lewisham East, because that might give an alternative interpretation of why the Parliamentary Under-Secretary of State for Communities and Local Government was described as a pinko, but I will not take that any further.

Despite that strange volte-face in the position of the two coalition partners, the debate has highlighted the lack of clarity about the provisions. Despite varying views about the degree to which individuals should have the freedom to do what they like with their property, we, as a group of people, would probably all subscribe to the view that there must be safeguards so that we can look after community assets in areas where the community could be seriously damaged by the kind of speculative behaviour that the Under-Secretary mentioned. All of us have had that experience in different forms in our constituency.

Equally, there have to be safeguards because, as we heard when we took evidence, a number of people who might be thought to be sympathetic in principle to the Government's objectives were extremely worried by this provision. William Worsley, for example, said in an evidence session that he fundamentally disagreed with the provision. He not only raised the issue of the infringement of property rights that the hon. Member for Bradford East raised, but went on to talk about the lack of clarity and the risk of all sorts of problems because

"There is no definition of an asset of community value. There is a right of review, but the grounds are not clear. There is a provision for compensation, but again that is not clear, and there is no entitlement as of right. We are really concerned that this will potentially act as a disincentive for landowners to provide facilities that local communities may need and want."—[*Official Report, Localism Public Bill Committee*, 27 January 2011; c. 129, Q219.]

All of us probably recall the example that he gave of how, in his village, he had made land available, but would have had second thoughts about it if he might be prevented from ever recovering it because it was designated a site of community value.

There is a problem here; there is no question about it. I hope that the Government will be serious in acknowledging some of the questions raised by the hon. Member for Bradford East, even if I do not go as far as him—for I am a pinko, too—in defending individual property rights against the kind of abuse that the provision is designed to remedy. I hope that the Government will be serious about the issue and recognise that there is a lack of clarity. There are definitional problems, and looking through all the submissions made to us, it seems that a provision that ought to have commanded widespread support has attracted a great deal of criticism and anxiety, so the hon. Gentleman has done us a service in raising the concern.

Fiona Bruce: Much of what I was going to say has already been said. I would like, however, to put on record that I support a great deal of what my hon. Friend the Member for Bradford East has said, and I ask the Minister to look again at the provision. I should declare an interest as someone who has run a small business and provided community facilities within property that I owned for almost over 20 years. I am concerned about the fact that many business owners like me might think twice about doing that again.

Questions arise about how frequently a community facility would have to be offered to make it something that might be put on the register. For example, is the running of a free legal advice clinic one morning a week, which my business has done for many years, sufficient, or would it have to be more frequent? The Minister should look at the provision more closely, taking into account the concerns raised today.

Alison Seabeck: This is an intriguing amendment for all the reasons that my right hon. Friend the Member for Greenwich and Woolwich set out so entertainingly. If he keeps stealing my lines he is going to be in trouble. But never mind, that is another matter; that is a bit of a domestic.

The Country Land and Business Association gave very strong evidence during the evidence sessions, as did the Federation of Master Builders. Both groups would like the provision removed in its entirety. However, we Opposition Members are broadly pinkos, and therefore we cannot support the amendment of the hon. Member for Bradford East. Surely the whole point of land of community value is that proactive communities can acknowledge potential community value—land that might become valuable to the community—and, moreover, cases where the loss of land would be of detriment to that community. They should be able to act, and the amendment prevents communities from acting.

James Morris (Halesowen and Rowley Regis) (Con): I was surprised to hear the hon. Member for Bradford East say that he did not think post offices and pubs were community assets. I am more of a liberal, I suppose, than a pinko in that sense. With economic times and the post office network changing, and changes in how people relate to post offices and pubs, there are changes to the nature of community values, and the provision ensures that communities can take possession of those aspects of their community that have been lost.

Alison Seabeck: Indeed. The hon. Gentleman touches on an interesting point. We do not have a definition of community value in the Bill. It can clearly vary from place to place, which makes it difficult to define. That poses problems for how the provision is to be interpreted and taken forward.

Ian Mearns (Gateshead) (Lab): I have a great deal of sympathy for the case of the pub, outlined by the Under-Secretary of State for Communities and Local Government, the hon. Member for Bromley and Chislehurst. I disagree with the hon. Member for Bradford East: in the case of a public house, quite often the person working behind the bar as manager may be the

last to know of the ultimate owner's intentions in the short-term, and of the likelihood of a sell-off of an asset of that nature. From that perspective, it is important that such assets are included in the broad church of assets of community value. Talking of broad churches, I think we have seen a number of them on show this afternoon, in terms of the political parties represented. I have significant sympathy for the pub, and we would probably favour a broad interpretation of an asset of community value.

Alison Seabeck: I do not know many pubs that are currently owned by the public sector. In many towns and villages they are undoubtedly of community value, as is green space that is held by a private trust or landowner but used by the community, either for free or at a peppercorn rent. The amendment would exclude such land from the provisions in a part of the Bill designed to empower communities. Many local authorities do not hold large amounts of land, and many are desperately seeking to dispose of assets to fund capital programmes at a time when the Government are cutting council funding.

With that in mind, the amendment would severely restrict the ability of communities to take up the power, because it would narrow the scope of the areas available for them to get involved in. With a Tory-led Government seeking to sell off the forests, perhaps the provision is a clever coalition wheeze to ensure that the community does not own them. The amendment tabled by the hon. Member for Bradford East would place out of the reach of communities land that they have always seen as a fundamental part of them. Conversely, perhaps it is rare example of joined-up government or an unintended consequence.

Is this a fissure in the coalition? By removing so much potential land from the clause, the hon. Members for Bradford East, and for St Austell and Newquay, would at a stroke effectively neuter the provisions of the chapter that their hon. Friends on the Front Bench have brought forward. I hope that the Minister can shed some light on that.

Andrew Stunell: For the purposes of the amendment, may I suggest that we all take off our political labels, throw them in the air and see where they land? I do not agree with my hon. Friend the Member for Bradford East. There has been a long-standing dialogue in English politics on the balance between property rights and community rights. Every step forward involves some compromise—some balance being struck between property rights, individual rights and the rights of the wider community. I draw comfort from the history of the development of planning law. In 1948, when the Planning Acts came into being, they were seen as a huge intrusion on the ability of land and property owners to do exactly what they wanted. I think it is fair to say that they were seen as somewhere to the left of Trotsky in their impact on society. We now see, however, that the people who most pray in aid planning laws and rules are mostly not supporters of Trotsky. It is a middle-class preoccupation to say that the porch sticks out too far or that the garage encroaches on the view from the back window. Obviously, there is always tension, and these things evolve and change over time.

3.30 pm

We are introducing a new provision that is long overdue in the eyes of many communities around the country. I must say to my hon. Friend the Member for Bradford East that it is also long overdue in the eyes of many Liberal Democrat campaigners, who have spent a lot of time saying that they believe that it is wrong for the owner of an asset to dispose of it over the head of the community that it serves. That owner might be a public authority or a private company. It might be a brewery or, as he says, the owner of a small business. It is, therefore, important to ensure that the provision is proportionate. It does not state that somebody who wants to be a bit awkward can claim that something has community value so that it gets on the list; there is a process. That process is designed to ensure that we do not have vexatious, silly or inappropriate nominations included on the register. As we will see in a later clause, there is a provision to ensure that that is transparent; there will be publication of both the listed assets and those assets that have been denied listing. I must say to my hon. Friend that, on this occasion, his fundamentalist localism has gone out of the window, and something else has come in. I hope that he will not press the amendment to a vote.

I appreciate the support of the right hon. Member for Greenwich and Woolwich for the proposal, and it may be that the coalition is shaped in a slightly different direction on this issue, as I said at the beginning of my remarks. However, he described the clause and the proposal as having many problems. They do not have a problem; they illustrate the fact that there is a tension between the community's rights and those of the individual. The clause and the chapter change that boundary, as did the introduction of planning regulations and heritage listing. At each stage, there is a battle as that boundary is pushed a little way forward, and we believe that that is appropriate.

Mr Raynsford: I did not say that there was a problem; I said that there was a lack of clarity. If the Minister thinks about it, he will realise that because of the point that he made about tensions and different interests, it is absolutely vital that the legislation is written in a way that is unambiguous and that does not allow loopholes or unforeseen consequences. We cannot have the plausible kinds of problems that were drawn to our attention by several witnesses. I hope that he will not dismiss my concerns, which, as he has recognised, come from someone who is sympathetic to the principle and does not want it to be discredited by failure or a lack of clarity.

Andrew Stunell: I thank the right hon. Gentleman for his helpful intervention. I want to give him that assurance. I said earlier that we are open to seeing what evidence we receive, which is why there is a consultation. It asks specific questions, but it is open-ended. If there are views that can inform how we proceed, I will welcome them.

The hon. Member for Plymouth, Moor View, has not yet made the point—she may come to it in a minute—that there are several places where such matters are identified in the legislation and will be dealt with by regulations. Those regulations will be promulgated by the Secretary of State or the appropriate authority. That will be informed by the consultation, and by our debate. At the

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end of it, we intend those regulations to be proportionate, balanced and effective, because I take the point of the right hon. Member for Greenwich and Woolwich that there is no value in putting something on the statute book that is, in effect, a nullity. I hope that my hon. Friend the Member for Bradford East feels that he has had his day in court, and that he will not press his amendment to a vote.

Mr Ward: I am willing to withdraw the amendment, because apparently that is what one does in these situations. I have not quite worked that one out yet. I have an admission to make: I live in a community asset. I do not believe that personal property rights extend to the point where I can do whatever I like with my private property. I believe firmly in the planning process. I live in a conservation area—not in a listed building, although I am surrounded by listed buildings, and mine lists in a different sense—and I am perfectly happy to accept the constraints that living in a conservation area imposes on me, regarding what I do with my property. To get on that list, however, a building must meet strict criteria that describe the importance and the value of properties to the community and the nation. The definition in the clause is far looser and more woolly; a local community can decide what it believes to be of community value.

Yes, I have had my turn, and I welcome that, but I urge caution. We all have pictures in our minds of the post office or the local pub that we would like to preserve and keep in place, and I am sure that we have all seen communities that have sadly declined over a period of time. I do not want to use the phrase “slippery slope”, but we need to be careful in defining what we mean by community assets. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 72 ordered to stand part of the Bill.

Clause 73

PROCEDURE FOR INCLUDING LAND IN LIST

Alison Seabeck: I beg to move amendment 106, in clause 73, page 53, line 10, leave out sub-paragraph (iii) and insert—

- (iii) by other persons resident, or community organisations based, within the local authority's area unless otherwise prescribed by the appropriate authority.’

The Chair: With this it will be convenient to discuss the following: amendment 107, in clause 73, page 53, line 11, at end insert—

‘(2A) For the purposes of subsection (2)(b) “community organisation” means a body—

- (a) that carries on activities primarily for the benefit of the community,
- (b) whose activities are not carried on for profit, and
- (c) whose activities are based primarily within the local authority's area.

(2B) The fact that an organisation's activities generate a financial surplus does not prevent it from being a community organisation for the purposes of subsection (2)(b) so long as that surplus is used for the purposes of those activities or invested in the community.’

Amendment 108, in clause 73, page 53, line 15, leave out paragraph (b).

Alison Seabeck: Amendment 106 would expand the groups that can make community nomination beyond the current prescriptive and somewhat exclusive list, which is wholly dependent on regulations—again, as yet unseen—that are made by the Secretary of State. As the Bill is drafted, only two specified groups can make community nominations: parish councils in England and community councils in Wales. We welcome the Government's decision to allow them to list land that they want protected for the benefit of the community, but we are surprised that the third category that will be allowed to have a say will be

“a person specified, or of a description specified, in regulations made by the appropriate authority.”

Once again, we have the centralising power of the Secretary of State. Here, not only do his fingers reach into the pies of local government, but he has power over the specification of individual members of communities. Do the Government think that this is possibly a step too far for the Secretary of State?

Amendments 106, 107 and 108 are designed to take some of the burden off the Secretary of State; his desk must be groaning under the weight of all these regulations, and we are only one third of the way through the Bill. Amendment 106 would, therefore, remove the Secretary of State's powers to specify or describe individuals who would have the right, and would open the door to communities to allow them the right to take up the powers described in this chapter.

Safeguards remain, because the Secretary of State—he still has some role in all this—should still be able to prevent an individual or a community group from participating in the scheme if he felt that was appropriate. That would allow him to take action if extremist groups, which none of us would welcome, found that they could use the legislation to serve their own ends at the expense of community cohesion. We feel, however, that it is important to get the balance right in the clause. It must be as inclusive as possible if we are to give the proposals any chance of success.

As it is, limiting to parish councils and their Welsh equivalents the ability to nominate land for inclusion on the list of land of community value would mean patchy coverage at best. I have serious doubts about the policy's equalities impact. It is not clear, given the Minister of State's answers in the evidence sessions, what the coverage of neighbourhood forums—one of the groupings that I suspect will appear in the regulations—will be. He put his hands up and said that he does not do targets and could not tell us how many there are going to be. There are some estimates that suggest that coverage could be as low as 20% in 10 years' time; others suggest that it might be 60%, but that would still leave large tranches of the country with very little coverage from any of those groups. Quite how they fit into the process is not entirely clear.

Amendment 107 supplements amendment 106 by providing a definition of “community organisation”. It would define a community group as one that acts for the benefit of the community, is not for profit and is based in the community's area.

Since I assembled my speaking notes, the Waterways Project has sent a note to the Committee. The note flagged up, I think unintentionally, a related issue by stating that it should be possible for a consortium of local groups to come forward to manage an asset—rivers and canals can cover large areas—which touches on the point raised earlier by my right hon. Friend the Member for Greenwich and Woolwich. We need to look at how to deal with the crossing of borders, because consortia might come forward in that way.

The second proposed new subsection would ensure that a not-for-profit group that turns a financial surplus is not excluded, so long as the surplus is reinvested in community activities. That point was raised earlier by my hon. Friend the Member for Worsley and Eccles South.

I draw the Ministers' attention back to the comments thoughtfully made by my hon. Friend the Member for Lewisham East on the importance of assisting the participation of all sorts of community groups and ensuring that these clauses are as inclusive as possible. We should ensure that people who perhaps normally feel that they do not have a voice and are not able to get involved in the listing process are enabled to do so.

Amendment 108 removes the right of local authorities to list land as being of community value. Although amendments 106 and 107 clearly come as a pair, amendment 108 deals with a separate issue that deserves discussion. Again, it is a probing amendment, and I appreciate that the thought behind it might not be immediately clear. We are conversant in and supportive of aiming to protect community land and assets for community use, but we want to debate the mechanisms through which land may be acquired by the state through compulsory purchase orders where it is essential for the provision of services or infrastructure.

There appears to be potential for a conflict of interest, if councils were able to use the list of land of community value to skew negotiations on the purchase of land or to manipulate the price by removing land from the open market. I would welcome the Minister's thoughts on that. Has he considered whether it is a potential problem?

There is a risk that landowners might feel that they are being treated unfairly if councils seek to combine the list of land of community value with subsequent compulsory purchase orders. What advice has the Minister taken on the impact that being placed on the list would have on the value of land and property? That point was raised by the hon. Member for Bradford East.

We do not want these powers to get a bad name, and we do not want to see the waters muddied. We very much want these powers to be a means of empowering local communities. If a community feels that land is of value, it should be listed, and if the council feels that the land is needed for the effective provision of local services or for the delivery of infrastructure, it should quite properly use its existing legal powers, which are well understood by the property sector. We think that this element could be misused, so we wish to amend the clause to ensure that the powers within the chapter are conferred solely on the local community, leaving local authorities free to use their existing powers to pursue similar aims. I will welcome the Minister's views about the amendment.

3.45 pm

Andrew Stunell: In view of the example that the hon. Lady gave, I should perhaps declare that I am a vice president of the Macclesfield Canal Society, which would be the sort of body she described. We are certainly sympathetic to the principle behind amendment 106, which proposes local connections. We are minded to restrict the nomination process to groups or individuals with a local connection, and we would intend to do this following consultation—I come back to the consultation document—in subsequent secondary legislation. That consultation will allow us to seek views more broadly. I do not discount the views expressed by the hon. Lady at all. We should take them into account, but I do not think that it is appropriate to anticipate the outcome of the consultation.

An important aspect of the community right to buy is the fact that it empowers local groups and individuals to save their own community assets, so all such groups must have that. I fear that the hon. Lady's valiant attempt to define what local groups are will not be sufficient, given the huge range and diversity of groups. I think that she acknowledges that, but she makes an important point that we certainly have in mind, and our debate reinforces the importance of it.

On amendment 108, the hon. Lady asked whether the local authority should be able to list assets on its own initiative. She has already accepted that it is valuable that town and parish councils should be able to nominate, so I put it to her that what is sauce for the goose is sauce for the gander. If, in her view, parish and town councils are appropriate bodies, it is a little hard to see why a principal council would be less able to use fair judgment and avoid conflicts of interest.

We think it is important that councillors, who are likely to be the people who initiate or generate requests through their councils, should be able to act. We also think that it is right that councils themselves should take a strategic view. Perhaps this is more obvious in rural areas, but one could well imagine that a district council might take a view at a strategic level within its area that local assets should be listed for communities with certain characteristics. Excluding local authorities from that opportunity would restrict their role as place shapers and would mean that we would lose the benefit of their strategic knowledge.

The hon. Lady painted that part of my argument even more clearly when she said that once parishes, neighbourhood plans and forums were taken into account, bits of the country would still not be covered by those mechanisms. It would therefore seem absolutely appropriate for the principal council in such an area to have the capacity to nominate assets of community value.

I hope that the hon. Lady understands that I am sympathetic to the intentions expressed in her first two amendments, although she has been a little premature by putting them down on the page. Amendment 108 would be a mistake, however, and would cut across our intentions, which I believe the Opposition share.

Alison Seabek: I thank the Minister for his response. I do not think that we would disagree with the general thrust of the clause but, as I pointed out, we have one or two concerns. I was interested by his comments about local connection and the need to try to define that at the

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end of the consultation process, although it would have been enormously helpful if we could have done so before now. I have made the point that we need to understand what local connection is, and part of the reasoning behind the amendments was to try to tease out exactly what would work. I hope that the Minister will come forward with a clearer provision on Report, because we support the proposal and want it to be developed.

I still have a slight worry about these large tranches of the country where decisions will be taken at local authority level and community groups may not feel as empowered as they might, given the structure of the legislation. However, with that said, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 73 ordered to stand part of the Bill.

Clause 74

PROCEDURE ON COMMUNITY NOMINATIONS

Alison Seabeck: I rise to speak to amendment 129, in clause 74, page 53, line 38, at end insert—

‘(7) The authority must publish in print and online, in a format easily understandable and useable by communities, information on community nominations and a guide for communities on the related process.’

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

Amendment 130, in clause 78, page 55, line 42, after ‘publish’, insert

‘in print and online in a format rendered easily understandable and useable by communities’.

Amendment 131, in clause 79, page 56, line 33, at end insert—

‘(5A) The authority must publish in print and online, in a format easily understandable and useable by communities, information on the moratorium on disposing of listed land and a guide for communities on the related process.’

Alison Seabeck: The amendments build on comments made earlier by my hon. Friend the Member for Worsley and Eccles South about access and the need to ensure that information is printed in an appropriate format. However, I think that the Minister responded fairly fully to those points, so I shall not move the amendment.

The Chair: The amendment is not moved.

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

Alison Seabeck: I do not intend to detain the Committee for long on this clause, but I wish to press the Minister for a couple of points of information.

We come back to the problem that there is no definition in the Bill of what land of community value is—other than that it is of community value. If a nomination is to be deemed valid, will a community need to provide evidence or an explanation establishing a burden of proof for the community value of each piece of land?

I ask that in relation to subsection (3)(b), which states that land must be included in the list if it “is of community value”. Who judges whether land is of community value and on what evidential basis? Can that be challenged? That information does not appear to be in the Bill, although I am happy to be corrected. Outside organisations made the point that problems could be caused unless we have a deeper explanation of the situation.

Under the Scottish system, community groups welcomed the opportunity to take over areas. The situation up there was initially seen as a win-win by outside organisations. People involved in the Kilfinan Community Forest Company felt that once the land was nominated, they would be able to take over the forest, so they cannot understand why they are being thwarted at every turn. There seem to be some problems with the Scottish system, so will the Minister explain how the system in the Bill is significantly different and how it will enable and empower community groups?

The British Chambers of Commerce states in its briefing that the clause should be amended to exclude from consideration community nominations with the sole purpose of preventing the development of a site. My view is that it would be difficult to find a level of proof to meet that criterion, but I am sure that the BCC would like to hear the Minister’s comments about that.

Andrew Stunell rose—

The Chair: Order. Before the Minister responds, may I be of further help to the Committee? I know that these proceedings are not easy and that there are difficulties when people are new. If Opposition Members wish to indicate to me that they do not want to move amendments, we can leave it like that.

Andrew Stunell: I thank the hon. Lady for what she has said and I hope that I can give her the assurances that she wants.

Clause 74 requires the local authority to consider the community nominations it receives—it does not have the discretion just to forget about them. The authority is then required to accept the nomination if the land or building is in its area and is of community value. The hon. Lady rightly put her finger on the point that what is of community value will differ in different places. One can imagine different assets coming to the attention of an inner urban community, a remote rural area and a suburban area, so we do not envisage a universal set of things that will be of community value. However, we intend to provide a definition through regulations under clause 72 to establish the matters to which local authorities will need to have regard, albeit accepting that there might be different criteria even within an authority area. It occurs to me that my hon. Friend the Member for Bradford East represents an authority that stretches from rural to inner urban, so there will be different criteria in different parts of that authority.

I thought that the criterion that an asset was in a local authority’s area was a fundamental point until I heard the right hon. Member for Greenwich and Woolwich pointing out that an asset might be partly in an authority’s area. However, if the local authority considers that the two criteria are met, subject to the definitions set out in regulations made under clause 72, it must enter the

nomination on the list of assets of community value. If the nomination is unsuccessful, the authority must give the person who made it its reasons for non-inclusion in writing. The process will be transparent, and I hope that the hon. Member for Plymouth, Moor Views accepts that it will deal with the issue that she raised. I hope that the Committee will support the clause.

Question put and agreed to.

Clause 74 accordingly ordered to stand part of the Bill.
Ordered, That further consideration be now adjourned.—
(Bill Wiggin.)

3.59 pm

Adjourned till Tuesday 15 February at half-past Ten o'clock.