

Subterranean Development Bill [HL]

Second Reading

10.05 am

Moved By Lord Selsdon

That the Bill be read a second time.

Lord Selsdon: My Lords, I am in something of a difficulty because I heard before this Second Reading today that it was set up entirely to extend the time of the House. I entered into a strange party-wall agreement with the noble Lord, Lord Steel. I said that we would probably need, if we were dealing with the Bill fairly, an hour and a half maximum, and that I would speak for 10 minutes and ask other people to confine themselves to six. The debate seems to be rather dominated by these Benches. This is because the noble Lord, Lord Berkeley, who was going to speak, is off sorting out the railways, because he has some considerable experience in that field.

I want to go back to the beginning. The beginning for me is 1927. It was rather a difficult time, with a recession afoot, and my grandfather had just finished his period as the chief civil commissioner for the general strike. The financial world was in a state and then one day Commercial Union collapsed and brought down Lloyds Bank. This was a very serious issue. It was not a financial collapse. Commercial Union had dug too big a hole in the ground and the buildings had effectively collapsed.

This was the start of what was called the Pyramus & Thisbe Club, the name being based on Shakespeare's "A Midsummer Night's Dream"-two lovers on either side of a party wall, and I today represent the chink. I am the chink in the armour of those party-wall surveyors who expect to earn large amounts of money by way of more and more complex legislation.

The beginning was not 1927; it was probably 1066. The original party wall had to be three feet wide and 16 feet tall, and it was between two properties. It had to be connected to the roof and on top of it there was a gutter. This was to collect the rain which should be shared between two parties. What came out was called "eavesdropping", which is the origin of the phone hacking problem that we have today.

Party-wall businesses go back into the mists of time. The mists of time, of course, are related to that great statue outside here, of Richard I. His mother, if I remember rightly, was Eleanor of Aquitaine, who owned the house that was later my mother's family house. This has nothing to do with what I am about to come on to, but it makes a point.

Time immemorial, therefore, was before anybody could remember and that, to some extent, was case history. If you had always walked to the church across somebody's field for as long as anybody could remember, that was time immemorial. Garter and his team acknowledged that the origin of this was 1066.

This is a Bill which I to some extent drafted. The Pyramus & Thisbe Club of experts tried to pull it apart. It is a Bill that should not really be necessary because of past tradition, but when you come to people digging underground and disturbing and disrupting their neighbours, it becomes a social issue. The problem here does not lie necessarily in the construction-the damage you do to subterranean water flows and things of that sort-but it comes to organisation and proper controls. Although I shall deal first with smaller houses, my concern goes beyond that.

As your Lordships know, this great Palace is built on rafts of wood-it was on a place called Thorney Island-and the wood packed itself together with the clay and gravel and made an adequate substructure. As the right reverend Prelates will know, I was at school at Winchester, and Winchester itself and the cathedral are on rafts of wood and clay. That is all right, but once they start to move or the waters erode the subsoil, there can be movement as we have here. I am very worried about Downing Street. Downing Street, as your Lordships know, is built on faggots, which are bits of middle-sized wood packed together with smaller pieces. Throughout London, the footings or foundations are in general no more than three courses of brick or, as I said in the brief that I wrote, the height of a proverbial pint of Guinness. Does this matter? It probably does not if the structure that was built on it is not added to and there is not too much development without adequate foundations.

What is the subterranean situation in London? Your Lordships will know that there are many rivers. I apologise in the brief to my noble friend Lord Jenkin of Roding, because the Roding is a river that I missed out, and I am not quite sure where it goes to. Of these rivers, one will think of the Fleet, the Wandle and the Westbourne. The Westbourne moves near me. I should declare an interest in that I have over the past few years written to the council about a development on behalf of many neighbours and others in London-who seem to think that I know something about it-asking whether it will co-operate. The council has said that it is technically a permitted small development underground and that if we oppose it we may be sued and are bound to lose, and we cannot afford it.

The idea is simply to introduce certain rules and regulations. I will explain why they might be necessary in the broader plan. For example, the River Westbourne starts up at Westbourne Terrace. It then comes down and once went into the Serpentine, but the bathers got a bit upset and decided to divert it. It was diverted into a sewer or tunnel that became known as the Ranelagh sewer. It then crossed Knightsbridge-at the knights' bridge-with a regular flow of water that is probably subterranean but still there today, and continued down. It was a great blessing to those of your Lordships' House who owned bog land, such as the Cadogans at Westminster, because the Westbourne drained those bogs and then went on down to the Thames. You also have the Wandle at Wandsworth. When, in ancient times, we had steam engines, a mass of water was taken out of the ground, as it was by the breweries. There is a member of the House of the Lords staff who well remembers that when they shut the brewery at Wandsworth she had to wear Wellingtons for three weeks to go to work.

This is all by way of background. The Bill says, "Don't dig down more than a certain area and a certain space without permission". I have said that we should look at the normal developments of this sort: terraced houses or terraced mews houses in the London area. To some extent, as the noble Earl, Lord Lytton, will point out, it also happens in Sandbanks near Poole and maybe a little in Liverpool, but it is not a national problem at the moment-it is a London one.

The Bill says, "Look, if you are allowed to put in a garret room above your top floor, why should you not be allowed to put extra space down below, provided always that it is no bigger or wider than the footprint of the house and no deeper than 12 feet or four metres?". Of course, if you go underground, it is not habitable accommodation unless you have external air. That is difficult because people make these developments and put beds down there. When the council inspectors come, the beds have miraculously disappeared. You have what could be called amenity accommodation but not necessarily residential accommodation. While some of the problems that will be raised are structural, internal problems include that if you have water down below you need to pump it out. If you have sewage or lavatories down below, you need to pump them out. One pump is not necessarily sufficient in case it breaks down so you may need two pumps. You also have air handling problems. Many of these things can to some extent be overlooked. The Bill says that if you follow certain rules and procedures it is perfectly all right to dig down below your own house in the footprint.

Here we come to the arguments. This is not about just accommodation but also money and added value. If you take a three-storey house with 700 square feet of floor and you add 700 square feet down below in the basement, you increase the size of that house, the footprint and the volume, by a third. That increases the value of that property-not by a third but probably two-fifths. That is quite significant. This is where we get the rules. Some genuinely want more accommodation for themselves but other people in the same terraced streets want to know that they have the same rights. The Bill says that there should be a code of conduct. This is fairly simple to impose for any development that is on the same footprint down below, excluding the gardens. The biggest that I could find was a garage that had three Ferraris, two Bentleys, a couple of Rolls-Royces and a Range Rover. It was of course to be slightly smaller than the proposed gymnasium, museum and swimming pool. Those sorts of development need careful control because they could create an interruption to subterranean areas.

Over the last few years, health and safety have identified problems-and they had a cause. They found that roughly 40 per cent of developments underground did not conform to health and safety standards. There were two deaths and plenty of other injuries and problems that were hushed up. There is no problem if these things are done properly and the Bill sets out a code of conduct that the Pyramus & Thisbe gang worked out. I suggest that the Bill becomes an example of what it is possible to do reasonably. [*Interruption.*] Having been in the Navy as a signalman, I know that that is the signal for an emergency situation and I have only half a minute left. I suggest that noble Lords look at the Bill, enjoy it and think, "How could it possibly be helpful that we ignore the problems of these vast subterranean developments that need proper control?". I beg to move.

Lord Jenkin of Roding: My Lords, I congratulate my noble friend on bringing forward this Bill. Some of us attempted to persuade the Government during the passage of the Localism Bill, which my noble friend Lady Hanham was in charge of in this House, to add something that would deal with the very real problem faced by many residents in parts of London. My noble friend Lord Selsdon has given the historical background. I am very concerned by the growing volume of major protest that has arisen because of some of the basement developments across areas of Westminster, Kensington and sometimes Hammersmith and Camden. They are not just by people looking for living accommodation.

Many of these major developments are for swimming pools and gyms. I have been told that a wealthy house owner can spend £750,000 excavating and putting a swimming pool into the basement. That sounds all right except for the horrendous impact on neighbours. Those of us who have seen some of the correspondence and read the reports of some of the associations that have pursued this matter cannot understand how this has been allowed to go on. There are problems with the extent of planning control. My noble friend Lady Hanham explained some of that during the passage of the Localism Bill, but this has to be dealt with.

I will make only one other point, as I sense that the House wishes to reach the next bit of business on the Order Paper. I took a deputation to see my noble friend, with people who have really endured the appalling conditions presented by some of these uncontrolled developments in next-door basements. When my noble friend heard the accounts, she turned to her officials-I hope I am not disclosing anything that I should not-and said, "This problem must be dealt with. It must be solved". I take great comfort from that statement that she will smile on this Bill.

My noble friend Lord Selsdon has introduced many-indeed most-of the protections that the residents in these areas are looking for. That is not to ban all basement development but to subject it to a code of practice and certain rules that aim to minimise the disruption for neighbours. I was intrigued by the historical account that my noble friend Lord Selsdon gave to the House, but the problem is happening today in parts of London and one or two other cities in the country. It has to be dealt with; this Bill attempts to deal with it, and it has my wholehearted support.

Baroness Gardner of Parkes: My Lords, we debated this on the Localism Bill, and since then we have had a number of meetings about the subject. One of the real problems is that at present, unless you are in a conservation area, a basement is permitted development and there is therefore no consultation or awareness among the neighbours of what is going to happen until it does, which can be very upsetting for people. I have been approached by huge numbers of people, all of whom are concerned about what is happening.

I take a slightly different view. I agree with my noble friend Lord Jenkin that you do not want to stop people making basements. If people need more space, they are not allowed to go up and perhaps the only way they can afford to expand their home for a growing family is to go down, so I am not opposed to people making basements. I do not need to declare an interest regarding my own house, because I think it probably

cannot have a basement. However, in the adjoining streets of the area where I live, over 50 per cent of the people have already developed their basement or have permission to do so. It would be very wrong to say that the other 50 per cent could not do it, as why would some have been able to do it because they got in before the law changed and others not? The most essential thing is to have protection for people while this work is going on.

Some local authorities-I point out Kensington and Chelsea in particular-have excellent guidelines for anything that requires planning permission. You must have a structural engineer doing the plans and supervising the work. You must be sure that the neighbours are aware that the hours of work will be reasonable and that all sorts of conditions are attached, which works very well indeed provided you have to get planning permission. If on the other hand you can just go right ahead and do it, that makes rather a difference.

Financial protection is as important as physical protection. Again, near where I now live, someone dug a basement and then went bankrupt. It was a huge space; I think they spent three years digging it. The place just stayed there, as there was no money from anywhere to deal with the problem and no one had any right to deal with it. If proper party-wall agreements were included and one had to put up a bond or insurance of some type to cover someone being unable to complete the work, it would take a great deal of worry away from neighbours who feel that they might be faced with that situation.

A structural engineer spoke to me about this recently. He said that one point I should make, which I think is relevant, is that if an insurance policy is taken out, it is very important that all parties are party to the agreement. He explained a case he had had in which the builder had failed to comply with anything and was told that he must now claim on his insurance, but he said, "Oh no, I'm not claiming on my insurance. It is very much cheaper for me to go bankrupt. I can set up another £100 company and start again, whereas if I claim on that insurance I am going to lose my no-claim benefit. No, it does not suit me at all". No party in that had an opportunity or right to claim for the financial compensation to deal with it, because the only party listed on the policy was the one man who did not wish to exercise that right. That is quite an important point.

People tell me that the most important thing of all is to have a construction management plan so that hours of work are established, there is consultation with locals and it can be established whether you need hand-digging in certain sensitive areas. My noble friend Lord Jenkin has given us horrendous tales; we have all read about them in the papers too. They are pretty terrible, but on the other hand there is controlled basement production. When we talk about it not yet being a national problem, that is for now, but as time goes by and land becomes scarcer and more people need more space, it will expand. It will not remain in this small area.

Someone mentioned subterranean development the first time the Secretary of State came to speak to us, and he did not even know what it was. He certainly knows now, because there has been such a lot of publicity about it, but he was quite surprised by the term. It was very limited in the first instance, but everyone now knows the position about basements and wants to see adequate protection, planning and

supervision of the works. Anyone who wants to read more of my comments on this can look up the debates on the Localism Bill, because I know that we do not want to spend time on it this morning. I strongly support the Bill.

Lord Rodgers of Quarry Bank: I greatly welcome my noble friend's Bill and join in the opportunity to discuss a growing environmental problem. The significance of the matter was drawn to my attention by the Highgate Society, of which I am a member. Highgate is part of postal district N6, about six miles north of Trafalgar Square. The society is outstanding, going from pursuing abuses such as demolishing fine ancient trees to presenting evidence on the Localism Bill and on the National Planning Policy Framework. My noble friend the Minister will be pleased to know that three weeks ago, the society called a meeting of representatives from local organisations and observers to discuss setting up a Highgate neighbourhood forum under the Localism Act 2011. This week there has been a public inquiry into appeals against the refusal of Haringey Council to approve planning applications to build three luxury houses on the much loved garden centre which I have regularly used. The society has been campaigning and has submitted a statement of objection.

A civic society can become a defender of the status quo, but the Highgate Society fully accepts change and can welcome it. It is cross-party and of no party, serving the community. I live in a ward run by Liberal Democrat councillors and in a Liberal Democrat parliamentary constituency, but adjoining there are Green and Labour councillors on Labour-run Camden council, while my own councillors in Highgate Village sit in the Labour-run Haringey Borough Council. It is commonplace and inevitable that there is friction from time to time between voluntary bodies and elected members and their officials but the society often works together with them, although it is ready to oppose what are seen to be unwise or damaging policies and decisions-or the lack of them.

It is right for me to set down the context of my interest and the particular area relevant to my noble friend's Bill. I am fully aware that nationwide, but especially in London, there has been a variety of problems arising from building works below ground level. Building underneath for a garage in a modest house can have serious consequences for a neighbour. A major development can adversely affect too many others. My noble friend has reminded us that there are serious subterranean problems in a number of west London boroughs, but I am talking only about my own bailiwick. I need not declare an interest as I am not a "victim", if I can use that description, and I do not expect to be one. I live less than 10 minutes' walk from Hampstead Heath. The river Fleet rises near Kenwood House and flows beneath on either side of Parliament Hill to the Thames. It is not surprising that there should be a variety of potential hydrological problems.

Last Saturday, I walked around the streets that fall towards Hampstead Heath. For the most part they were covered by large Victorian and early 20th-century houses with substantial gardens, but increasingly these are being demolished-a snowball effect, as *Architects' Journal* put it-sometimes replaced by even larger ones, or they are being modernised with more parking spaces, additional rooms and even swimming pools. The contractors dig deep, perhaps four metres below the existing surface and

sometimes very much deeper. As a result, they can disrupt the water table and drainage and can cause serious damage to nearby properties. Within a quarter square mile there must be a dozen significant residential building sites. Last Saturday I saw a huge site with a crane above it that may have been six or seven metres deep. A local resident drew attention to new cracks in his house that have emerged since the subterranean building works began.

On this occasion we are discussing the principles of the policy behind the Bill. If it reaches a Committee stage, there are a number of matters that I will wish to pursue. The Bill provides for the regulation of subterranean development work and establishes a code of practice, but it is not wholly clear about the practical applications in dealing with structural damage. My noble friend says that such building works can be very disruptive of daily life and cause excessive disturbance and distress, but the Bill does not mention compensation for damage, how long it might be before the damage becomes evident and how it can be assessed and paid out. There is no mention of building control or inspection beyond normal party-wall procedures.

In paragraph 1(h) of Schedule 1, the code of practice includes the,

"protection of the subsoil environment including hydrological and hydrogeological conditions".

Schedule 2 describes the building owner responsibilities and refers to, among others, water conditions below ground and calls for "suitable studies". That is fine, but not enough.

In his Explanatory Notes to the Bill, my noble friend comments on "underground conditions". I wonder whether there are enough planning officers who are competent to deal with the complex subterranean problems and interested enough to arrange a hydrological study in sensitive areas as has been done by the London Borough of Camden but not by Haringey. In addition, there should be a hydrological survey by an independent professional paid by the owner or developer ahead of an application for planning permission.

In Highgate, the problem that I have described has emerged within the last two or three years and it is accelerating. Local authorities can be slow in catching up with a new development opportunity and fashion. It remains to be seen whether a Private Member's Bill can achieve my noble friend's purpose, which I applaud. Something should be done, though, and quickly. I hope that the Minister will share the concern of the House and point in the direction of the necessary solutions.

Viscount Bridgeman: My Lords, it is a pleasure to have my noble friend Lord Selsdon back on these Benches after his very brief sojourn on the Benches opposite. He is to be congratulated on bringing forward this small but significant Bill, and I hope I am not anticipating things when I say that we are very pleased that the Minister will be giving it her support.

As my noble friend has pointed out, the Bill aims to strike an equitable balance between those who want to improve their properties and the owners of neighbouring properties who need proper safeguards against the disruption that these developments are inevitably likely to cause. There are three categories: the commercial developer, the private owner who wishes to improve the capital value of his property with the intention of at some stage selling it and-this is important-the owner who simply wishes to extend the property and improve its amenities for personal and family reasons.

As noble Lords have pointed out, these measures will apply principally to three London boroughs where there are high-value properties, Westminster, Kensington and Camden. Here the authorities are familiar with this kind of development and already apply high standards. However, the Bill will also apply across England, involving diverse properties where local authorities will have differing levels of experience in this field.

The Bill is a simple and straightforward one. It sets out standards of practice that form a common minimum requirement, including the size and extent of the development and the control of the nuisance and inconvenience that may be caused to local residents. While the majority of developers are reputable and experienced, there are unfortunately some who are not, and my noble friend has referred to these. One of the welcome effects of this Bill, when, as I hope, it becomes law, will be to eliminate these rogue operators who will either disappear from the scene or have to improve their practices. My noble friend has been advised by a team of wide professional experience in subterranean developments, and at the core of the Bill is a code of practice that is practicable and unequivocal, to which any developer will be obliged to adhere.

I would like to refer to the protection to adjacent property owners, which the Bill seeks to address. The radius within which notification to adjacent owners is required has been extended, and significantly strict obligations are imposed on the developer in respect of the control of noise and dirt and time overruns. Many residents will put up with large measures of inconvenience for relatively short periods. It is the extended periods of many subterranean works that cause so much aggravation and can poison neighbourly relations for years to come. The social effects of this Bill, to which my noble friend has referred, should not be ignored.

There is one particular point that I would like to make, and again my noble friend has referred to this. Many of these developments take place in terraced properties. When a development has been commenced, in many instances it excites the interest of other owners of similar properties in the street, and planning permission on terms similar to the first one cannot reasonably be withheld-a compelling reason for proper standards to be in place from the outset, which is the purpose of this Bill.

This well presented Bill seeks to fill a small but significant gap in amenities legislation. I hope that your Lordships, with the assistance of the Minister and her department, will be able to expedite its progress through Parliament.

Lord Mancroft: My Lords, my attention was drawn to my noble friend's Bill by my own experiences in this area. I was born not far from here, in Montague Square in Marylebone. We lived in what I suppose was a terraced house—a larger terraced house in a large square in London. We lived there for a long time. I was born, as were my sisters, in the same room that my father had been born in some 40 years before. Luckily they had redecorated it in between.

During the time that we lived there, a number of changes took place. My noble friend Lord Henley's father and grandfather lived on one side of us at about the same time as we did. I do not know who lived on the other side of the house, but their tenure was interfered with rather substantially and seriously in 1941 when the Luftwaffe dropped a bomb on the house and turned it into a pile of rubble. My family was obliged to leave our house from 1942 until the end of 1945, when they were allowed back in to clear the dinner things and generally tidy up.

As we grew up in that house, my sisters and I always knew that the dining table could be laid only about 10 minutes before lunch, otherwise the silver would slide down the table and end up in a heap on the floor. When we opened the drawers of our dressing tables, all our clothes would be at either the front or the back, depending on the angle at which the table was standing, because the house clearly leaned about two or three inches across as a result of the neighbour's house having been turned into rubble. It was nothing to do with what we had done, or with what the neighbours had done. It was just a fact of life.

Eventually, my mother persuaded my father that we could not go on living in a house of that size in that part of London. We sold it in 1968. I do not remember the circumstances because I was only 11 years old. However, I remember that we sold it to a very grand Saudi prince; I remember him coming to the house in his head dress and everything, as they did in those days. Rather more importantly, I also remember that five days after we sold it to him and moved out, the entire house fell down. Unsurprisingly, he was quite annoyed about this but we were able to prove that it was not our fault. Whether the Saudi prince then went on to sue the Luftwaffe, I do not know.

Many years later, my circumstances having deteriorated to the point where I no longer had a butler to lay the table and could no longer afford to live north of the river, I moved into a house in Clapham—my first ever family home, which was a medium-sized south London terraced house. It had quite a nice little cellar, which was not mentioned on the particulars. I doubt that the estate agent who put the particulars together had ever been down to the cellar, so as purchasers we had no means of knowing whether it should be there. Clearly, the local authority and whoever did the search were not aware that it was there. However, some time after we moved in, we discovered that a previous owner—we had no idea who it was—had made that cellar. They had dug down to it and dug just beyond the footprint of the house. The result was that we ended up in a 10-year battle with neighbours and insurers over who would pay for our cracked walls and the neighbours' cracked walls, and whether trees were to be removed.

The point is that the damage occurred long before we were resident in the house. I imagine that the matter was still being argued about long after we left. It was damage

that was not registered by the estate agents; nor did the local authority know about it. There must be an enormous number of houses in London where the local authority does not know that a cellar has been created or, more likely, has been enlarged because many of the old particulars are not as accurate as they used to be.

Within 100 yards' walk of where I live now, in Chelsea, there have been two such calamities in the past 10 years, one involving a very large house. Some very rich Italians had built a swimming pool in the basement and woke up one morning to find that the floor above was in the swimming pool. The following morning the entire house came down.

In his Bill, my noble friend has made a number of provisions for when such things happen. However, they will work only in certain circumstances. They will not work in circumstances where the owners-in this case, Italians-quite rightly packed their bags and went back to Italy; where the architect found that he could not get hold of the builders; and where the builders packed up and went back to Ireland. Nobody was liable, nobody was going to pay and there was no insurance. Although the liability of builders, architects, chartered surveyors, owners, et cetera is covered by my noble friend's Bill, we will need to look at it closely in Committee.

The most recent occasion occurred very close to the previous one, around the corner in Chester Street, where somebody had sought to make a gym in what used to be the old coal cellar and out under quite a narrow street. The street was wide enough for a garbage truck to get down but, unfortunately, it then turned out that the strength of the road surface was not enough to carry the garbage truck. The people who had built the gym found the garbage truck in it, having come through the road surface. It also damaged the houses opposite in that narrow street and the houses on either side. Five big, valuable, expensive Chelsea houses were damaged by one garbage truck going into one person's small underground extension.

There is a whole range of different ways in which these problems can occur. As shown by the information backing my noble friend's Bill, the terrifying thing is that this problem is growing at an enormous rate. I am staggered by the number of developments going on in some parts of London, even within the same street. One does not have to be a chartered surveyor-which I am not-to work out how dangerous it potentially is for the whole area. I am also horrified by the number of injuries to builders who vanish down large holes that they did not know were there. Maybe they did know that they were there but did not take account of them.

The last point that I draw to your Lordships' attention, which we need to look at in Committee, should we reach that stage, concerns Clause 4, which deals with notice periods for letting people know that you are planning to develop and giving them the right to reply within a certain period. Clause 4(2) reads:

"Where an adjoining owner does not notify the building owner in writing within 14 days ... a dispute is deemed to have arisen".

Several noble Lords have talked about the balance between needing regulation and allowing people to do constructive and useful things to their houses if they want to. Balance is important in this. We do not want to overregulate. However, I worry that

14 days-in the holiday period, for example-is quite a short notice period, although you do not want to make it too long. That is something to look at and talk about further in Committee.

My noble friend Lord Bridgeman talked about the need for balance. This is a balanced Bill; it certainly attempts to be balanced. That is what we shall have to look at carefully in Committee. In the mean time, I, too, welcome the Bill and thank my noble friend for bringing it forward today.

The Earl of Lytton: My Lords, I welcome the Bill and commend the noble Lord, Lord Selsdon, on introducing it. I have some interests to declare. As noble Lords will recall, I took an allied piece of legislation, the Party Wall etc. Act 1996, through all its stages in this House. Now, as then, I am a practising chartered surveyor. My professional work includes issues to do with excavations and party walls, so I am afraid I stand before the House guilty as charged. I am also a member of the Pyramus & Thisbe Club, which was referred to by the noble Lord, Lord Selsdon, and a former chairman of both its national council and its Sussex branch. It is an organisation of professionals with a special interest in party wall and neighbour issues, notwithstanding the rather quaint name that it rejoices under. I am chairman of the professional panel of the Royal Institution of Chartered Surveyors that is concerned with neighbour issues-that is, rights of light, party walls, high hedges, boundaries and access rights. Therefore, I have some insight into that. I had the privilege of being part of the professional team that assisted the noble Lord, Lord Selsdon, in drafting the Bill and am glad to have had some input.

The drive for deep excavations is a product of high property values, high transaction costs, planning restrictions and scarce space-usually but not always affecting urban sites. In such areas, people build up, as the noble Baroness, Lady Gardner of Parkes, has said, convert roof voids, build on at the rear and, having exhausted all these options, dig down to gain extra floor space. Although these are partly regulated by the Party Wall etc. Act 1996, it does not currently provide a complete answer. Just as I explained to the House in 1996 the problems of inadequately regulated loft conversion and other activities affecting party walls, I now do so again in the context of deep excavations. The structural consequences are just as serious and the financial ones potentially huge.

There are several issues arising from deep excavations, especially in densely built-up environments. First, the public interest in the urban substrata is often not adequately addressed and important factors can be overlooked. Secondly, there are particular risks for subsoil support to neighbouring properties, as we have heard. Often, where damage occurs, there are inadequate safeguards in terms of insurance cover, warranties or security of expenses to protect the interests of innocent neighbours. Some of the damage to neighbouring property can be very severe and remediation costly. Often, the only remedy may be protracted and expensive court proceedings. These risks are not sufficiently internalised by developers in that if the contractor goes bust or the property owner carrying out the work becomes insolvent, neighbours can be left with the adjacent blight of an unfinished and possibly unsafe hole in the ground, with no recourse and no ability to enter land and remediate themselves.

Where serial basement construction is carried out in an area, with a number of successive schemes in different properties, residents and businesses can suffer prolonged periods of unreasonable inconvenience. Any development risks causing some inconvenience, and disamenity is, to some extent, a fact of urban life. Certainly, one would not want to fetter that unduly. However, it is necessary to assess the point at which it becomes unreasonable. There certainly are such circumstances.

Local authorities may not have sufficient controls. We have heard about health and safety but it may also be a case of permitted development, as was pointed out by the noble Baroness, Lady Gardner of Parkes. Building regulations approval can be outsourced to a separate commercial entity. These factors can collectively sometimes leave the wider community interest unprotected. Wider adoption of a code of practice would go a long way to help this. Although I may be accused of self-interest, I have to observe that some projects are inadequately designed and ineffectively supervised.

This should not be seen as an anti-development Bill. It is in the interests of the best use of scarce urban land that it is optimised and the conditions applied to that should not be disproportionate. Nor is it designed to control the enlargement of houses on a premise that eventually there will be no smaller and more affordable ones left. That may be a complaint but this Bill should not be used to address it. It certainly should not provide for private rights of veto or entitlement to compensation for inconvenience that in the urban context may be a simple fact of life. However, the Bill will pave the way for stiffer controls to ensure that the attendant risks to the interests of society and of neighbours and the potential for excessive risk-taking and inconvenience caused by development are addressed by the person wishing to excavate. The Bill provides for wider-ranging notification than the Party Wall etc. Act, giving neighbours better advance notice. However, I appreciate from the comment made by the noble Lord, Lord Mancroft, that it does not give them a longer period of notice. That point may need to be looked at.

The Bill will enable works to be suspended in certain instances, which is welcome. It will make more overt the rather knotty problem of the provision for security for expenses and thus, I hope, provide greater neighbour protection. I hope that this can be looked at in much more detail so that it is simplified. The Bill will also clarify liabilities. I welcome the idea of producing a code of practice to ensure better administration, and particularly the suggestion that this should be administered by competent professionals.

All these are highly commendable aims. I welcome them in broad principle and so do the majority of practitioners to whom I have spoken. The Bill is not perfect and there are some technical issues of detail and lack of clarity that need to be sorted out. We can deal with these at a later stage. The Bill complements existing party wall legislation, which is considered to work acceptably well. In fact, many of the aspirations in the Bill could be dealt with under revised party wall legislation, but I understand the reasons why the noble Lord, Lord Selsdon, has approached this as a free-standing Bill—he was right to do so.

I trust that, in answering, the Minister will accept that there is an important issue to be addressed. I sincerely hope that the aspirations behind this Bill will reach the statute

book in some shape or form. If I can be of any assistance in discussions about achieving that I should be glad to do so.

The Earl of Caithness: My Lords, I have been chuckling a lot in the past few days as noble Lords have come up to me and to other noble Lords to say that the only reason I am speaking on this Bill is to delay the next piece of business. I am happy to declare my interests once again. I am a surveyor and a consultant to a residential property company in Chelsea, which has an office with a crack in the wall that has been caused by a problem in a basement located two houses away. Therefore, I think I am qualified to speak on this matter.

It is a particular pleasure to follow the noble Earl, Lord Lytton. There is no greater exponent on the subject of why the hereditary Peers by-elections principle works than the noble Earl. I thank him for the incredible amount of hard work that he has done in chairing the relevant RICS body undertaking work on this matter. My noble friend Lord Selsdon might know of the work that the noble Earl has done in that regard but I do not think that many other noble Lords do. The latest RICS booklet that has been produced on this subject is of immense value to all us professionals. While I am on that subject, I say to my noble friend Lady Hanham that the former Deputy Prime Minister, the then Member for Kingston upon Hull East, Mr Prescott, produced a very good, simple party wall explanatory leaflet in 1999. I understand that her department is looking at revising this. I hope that she will be able to expedite that process as the leaflet complemented the RICS booklet. The RICS booklet is for professionals, whereas the booklet that the department produced made for much easier reading for those who are unfamiliar with the technical terms used by the RICS.

I thank my noble friend Lord Selsdon for introducing the Bill and for the timing of it. The timing is hugely important because I believe that many of the Bill's provisions should have statutory force by 2013. Planning law and the building regulations are currently being revised. I will come back to that in due course.

I am not against subterranean development. Human beings have carried out subterranean development all around the world for many years. I have no doubt that some of your Lordships have been to the Sun Temple at Modhera in India or to the rock-hewn churches in Lalibela in Ethiopia, which is an UNESCO world heritage site. If noble Lords have not been to those places, I am sure that they will have visited the underground structures in Benin in West Africa. Apple is adding a 1,000-seat underground auditorium to its new headquarters in Cupertino, California. In Mexico City there is a proposal to build an earthscraper underground. The first 10 storeys will comprise a museum, the next 10 storeys retail outlets and housing and there will be a further 35 storeys of office space. It will go a long way underground. In London we have the Underground, the first line of which opened in 1863, and the Victorian and Edwardian basements. We have a great deal of underground development. Indeed, the new Crossrail station at Tottenham Court Road affects the neighbouring buildings. It is, of course, being built in a professional manner. Centrepoint-an existing building-has had to have new piles 50 metres deep and one and a half metres across to support it while the work is going on. Therefore, we should not take too much notice of

rumours, suspicions and headlines in the papers as subterranean development can be perfectly okay and, indeed, beneficial.

I take a different view from that of my noble friend Lord Selsdon. He said this measure applies principally to London. I disagree entirely with that. The Party Wall etc. Act 1996 started out as a London Bill, but it affects the whole country. There are problems in respect of Liverpool, Manchester, Leeds, Oxford and Bath. There are plenty of areas around the country where it is difficult to build upwards because of the planning rules and if you want to expand the only way to go is down. This Bill has nationwide application. Can my noble friend tell me whether it applies to Scotland? I could not find that out. Is it a UK-wide Bill or does it apply only to England and Wales or to England, Wales and Northern Ireland? I hope that he can answer that point.

I mentioned the work that the department of my noble friend Lady Hanham is doing on revising the building regulations and planning law. I believe that there is no need for this Bill as many of its provisions could be implemented through revising the building regulations. It would be very easy to amend Part A of the building regulations to include much of the work that the RICS has produced and what is in the Bill. I agree with many of the Bill's provisions. Indeed, the whole of Clause 4(3) could be included in the revised building regulations. However, the other thing that can happen is that councils can get their act together. I am particularly delighted that my noble friend Lord True will speak after me. I really do not understand why councils have not got a grip on this problem. Permitted development is fairly flexible and it is quite easy to revise it.

There are particular problems in London. My noble friend Lord Jenkin of Roding was rather dismissive of swimming pools being part of such development. I have no objection to that, provided it is done properly. There might be noise and the time element that the noble Earl, Lord Lytton, mentioned is a problem-it takes as long to dig down two storeys as it does to build up 10 storeys. For those next-door neighbours who are anguished about suffering the noise, dirt and inconvenience, I should say that building a basement will actually be completed. Some of us have suffered from development that is not on our land, but which we have to look at and is much more painful, such as the wind farms that are mushrooming in the country. Indeed, my noble friend Lord Reay, who is sadly not in his place, is a great exponent of their evils.

Although the Bill as it stands is not necessary, there is one thing on which there needs to be legislation-insurance, as mentioned by the noble Earl, Lord Lytton, and my noble friends Lady Gardner of Parkes and Lord Mancroft. There ought to be a separate insurance bond for anyone who wishes to build underground to provide a guarantee for neighbours. That is an important issue. Councils, particularly in London, need to be aware of this because any development that is more than four metres deep requires an archaeological dig, because Roman remains can be found at about six metres down and it is important that they are excavated properly.

I shall go through the Bill quickly. A good place for there to be provision for an insurance bond would be Clause 6. Such a provision requires primary legislation. Perhaps I may ask my noble friend about Schedule 2, which states that "the building

owner shall" do certain things. If the building owner is overseas, such as the one mentioned by my noble friend Lord Mancroft, what about his agent? Paragraph 1(e) of Schedule 2 states "provide where necessary". I ask-provide to whom? Am I allowed to wander down the street, see someone digging out a basement and demand all this information? This is where we have a lot of work to do in Committee. If my noble friend Lady Hanham could produce a document-perhaps a statutory instrument-that made provision for an insurance bond, I do not think that there would be any need for the Bill and we could address this issue in other ways.

Viscount Astor: My Lords, I am lucky enough to live in quite a smart street in London. In fact, it is so smart that even the noble Lord, Lord Myners, has a house in it. There the similarity between us ends because he has a large house and I have a small basement flat. I have been encouraged by my neighbours to speak on the Bill because we have had what one could describe as a subterranean problem.

One of the difficulties of living in what one might call a smart street relates to houses such as the one opposite me that has been bought by a foreign couple. I am told that they are Russian, but I have absolutely no proof of that. Apparently, when Russians buy houses in London, the one thing they really enjoy is digging down-I am not entirely sure why. Anyway, the builders appeared and they dug and they dug. In our street, the basement goes under not only the pavement but the street. I have no idea how far they dug, but the result was that both houses on either side virtually collapsed into the hole, causing enormous inconvenience. The neighbours were virtually powerless to do anything about it, and that is the issue that has been brought up by my noble friend Lord Selsdon and why this is important. The result on our street was that the pavement has been blocked and a number of skips have been sitting outside the house for more than two years. Workmen come and go but nothing seems to happen. I understand that this happens in quite a number of streets in London.

I am not against all forms of development. Indeed, my flat originally included what must have been the coal bunker that went under the street. It is a useful place for storage and I am delighted to have it. However, development must be regulated and it is an issue that affects not only London but outside, as my noble friend Lord Caithness said. While I am referring to London, I should say that I am delighted that the noble Baroness, Lady Hanham, is to respond to the debate because her experience in local government, particularly in Kensington and Chelsea, will enormously useful.

My noble friend Lord Selsdon said that basement development was often for building garages. However, the Bill refers to additional accommodation. I do not know whether that covers a garage, but perhaps he can tell us when he responds. Equally, I am unclear how far one can dig down without needing planning permission, or how much further one can go. I understand that in a number of developments in London enormous spaces have been excavated, lifts have been installed and the developments go down three or four floors. That would involve digging rather more than the three or four metres suggested by my noble friend.

The real issue here is liability and the nuisance to neighbours. In London we have complicated arrangements. Some houses are owned by freeholders, some are

leasehold and have landlords, and the particular issue in our street is that the liability seems to fall somewhere between the landlord, the leaseholder and various people in between. No one is clear who is responsible and accountable. If such developments are to continue, part of this process must involve an adequate and watertight insurance policy whereby neighbours can get some form of compensation should disaster strike. It is clear that the further down you dig, the larger the risk. These accidents often happen entirely unintentionally and it is not necessarily the fault of the builder, the architect or anyone else. You dig down and you do not know what you will find. There ought to be some way of making sure that when the holes are dug not everyone "does a runner", leaving no one responsible for tidying up the mess. Some form of insurance or similar provision is vital, and I hope that my noble friend will address that issue.

I am making only a brief contribution, and I have been prompted to do so by my neighbours, so I have no interest to declare. However, this is an important issue and I am delighted that my noble friend has introduced the Bill.

Lord True: My Lords, as others have said, this is an important Bill. The issue was discussed at some length during the Localism Bill, and I pay tribute to my noble friend and to the noble Baroness, Lady Gardner of Parkes, for what they did during those debates to bring this matter to the attention of the House.

The great strength of the Bill is that it seeks to codify an overarching approach to an emerging and extending issue. I do not object to the liberty to develop one's own house and property, but such development can cause serious problems, as we have heard, and it should come within a properly controlled and consistent regime. The procedures laid out in the Bill are clear and admirable, and I support them wholeheartedly. I join in the tribute to the noble Earl, Lord Lytton, whose professional expertise on this issue has contributed so much.

Whether this measure requires an Act of Parliament, accords or a code of practice—a question raised by the noble Earl, Lord Caithness—the fact remains that it needs to be done. The case has been made by enough noble Lords who have spoken.

This is often perceived as a problem relating to central London but, as has been said by others, it does not relate only to central London. I can say from my perspective—and I declare an interest as leader of a London borough council where subterranean development takes place—that the problem of controlling and managing it is far more widely distributed than many imagine. Of course, as property prices increase, people naturally seek to exploit the territory that is theirs wherever they can. One of my council colleagues was telling me only yesterday of a case where development has already caused damage of more than £50,000 to a neighbouring property during construction, when pumps were put in the wrong place, and so on and so forth. That damage occurs before the neighbour is necessarily aware, and certainly before the council is aware, and it then has to be dealt with under the procedures of the Party Wall etc. Act and through the civil law.

In another case, there is a proposal only 30 yards from the Thames to go down two floors, with pumps going full-time to keep the site dry. People have ambitions to do that, so it needs an element of control. I hope that the procedures in the Bill are somehow implemented. If the Government cannot promise to introduce a Bill of their own on this line, I hope that they will be sympathetic if my noble friend or a Member of the other place brings forward a similar Bill in another Session, because the case has been made that the matter needs to be addressed.

The noble Earl, Lord Caithness, said that councils could do more. Councils are used to being criticised; it is part of one's lifestyle. We try to do what we can- Hammersmith and Fulham has recently introduced what I think are very effective documents on this-but the reality is that councils are often chasing the problem. We get many complaints about basements during construction, usually about noise, but in many cases planning permission has not been required-an issue addressed in the noble Lord's Bill-so conditions have not been imposed. Then, building control officers, who are one of the most hard-pressed and underresourced parts of many councils, have to try to get under control a project that has already started. Councils do not have adequate powers, because some developments do not require planning permission.

It is said that Article 4 directions can be put in place. That is certainly true, but delivering Article 4 directions is quite cumbersome and requires a good deal of consultation, and so on and so forth. Our experience is that permitted development of smaller scale activities is causing a lot of the problems. Under Clause 3(1)(a), they will be brought within the ambit of the system. I welcome that.

Councils' planning control powers are not designed to protect neighbouring buildings from construction damage. That is regulated by the 1996 Act; it does not necessarily involve the council. Yes, environmental health laws can be applied to construction sites, but that is directed primarily at controlling pollution and nuisances related to noise, vibration and dust. We can use those controls on construction sites to keep problems within reasonable bounds, but they cannot stop the issues arising from construction. I would be interested to consider the point made about the extension of building regulations. They relate to matters such as structural stability and foundations, but they are focused on compliance with regulations on the application property itself, rather than the effects on the local environment down the road or on buildings on neighbouring sites. There are other things that councils can do. My council has been proactive in dealing with issues arising from piledriving, which in larger developments is extremely tiresome and troubling for neighbours. A lot can be done under the Control of Pollution Act and other legislation to contain both the timing and the method with which piling is driven in larger developments.

Without further detaining the House, I accept the noble Earl's culminating point that councils should do more; we will try. It would be enormously helpful if the excellent code and approach embodied in the Bill were adopted by whatever method, with government support and encouragement-it may not need government time. We could wrap up all the things in the Bill so that we have proper control, proper notice-as has been mentioned by other noble Lords-proper management and a proper sense of responsibility. People can then exercise their freedoms with a sense of responsibility to others. We have an outstanding model before us in the Bill, a template for the

construction of a code of practice, and I hope that the Minister will give it a warm welcome.

Lord Northbrook: My Lords, I support the noble Lord, Lord Selsdon, in his introduction of this important Bill and compliment him on the thoroughness with which he has approached the issue with the support and expertise of the Pyramus & Thisbe Club. As the owner of a London flat above a row of shops and a restaurant, which I am not sure is covered by the Bill, I am thankfully not affected at the moment by the disturbance caused by basement developments, but see on many neighbouring streets the disruption they cause, with work sometimes being carried on even at night.

In preparing for Second Reading, I was interested to read the debate in the other place on 8 November, when the main speakers were Karen Black, the Labour MP for Westminster North, supported by the Conservative MP for the Cities of London and Westminster, Mark Field. I shall be interested to hear other noble Lords' London experiences and to listen to the noble Lord, Lord Rodgers of Quarry Bank, and the Highgate Society.

Let me make it clear that, like other speakers, I am not opposed in principle to the provision of basements below existing houses, but I am concerned about aspects of design, construction and regulation. The two members of the other place who spoke in the debates were from London constituencies. As other speakers have said, the problem appears to be particularly bad in London, but it is extending to other cities. We are dealing primarily with terraced houses. In many parts of London, they are 19th-century houses built as terraces of varying widths and with a different number of storeys. They have proved remarkably adaptable over the past century to changing household needs as well as changing tenure and household size.

The scale and speed with which such developments are spreading over inner London is a major concern for neighbourhoods. The damage to neighbours' houses and streets and pavements is uncompensated. It can become a burden on the local authority, which has responsibility for mending pavements, or it can fall on residents in the case of some adopted roads and mews. At present, the damage is not compensated in any way.

Last week's *Evening Standard* reported that, at last, local councils are starting to take action. On 1 February, it reported that residents seeking basement conversions in Kensington and Chelsea face tough new measures. Figures apparently reveal that there has been a fourfold increase in applications for underground building over the past few years. The *Standard* reports that the council is revising its rules to put an end to "basement wars". That action comes after a spate of court cases from residents unhappy with neighbours being given the go-ahead for conversions. Several different judicial review applications were recently launched against the council.

In their response to the withdrawn amendments to the then Localism Bill, the Government essentially argued that it is not the place for government to legislate on the matter of subterranean development and that local planning authorities have the powers to cope. I do not believe that that is the case; nor do the experts in industries

involved with the works. Jim Cook, director for ground engineering of Buro Happold, an international engineering consultancy, said:

"More control within the industry regarding the construction of basements is welcome".

He added:

"There are a number of issues around construction of basements to dwellings, including disruption to neighbours, damage to properties, health and safety matters, and their effect on local utilities and services".

Others raised concern about the impact on the water table. Michael Coombs, senior partner at Alan Baxter, a structural and civil engineering consultancy, said:

"There are varying groundwater conditions near the surface in London which are to do with perched water and the mainly lost rivers",

mentioned by my noble friend Lord Selston, "which drained London's rainwater". In many areas, these underground flows continue. My noble friend's map, included in the Explanatory Notes, lists no fewer than 20 tributaries of the River Thames. They must be taken into account when new subterranean developments are being planned. Although a single basement extension may not have an effect on the local water flow, problems may be caused by the snowball effect of more landlords opting to build basement extensions. Coombs also said:

"Large basements or a continuous run of basements could cause problems by blocking the flow of underground perched water, leading to raised water levels and problems nearby".

Surely this is an area where the expertise of the Environment Agency needs to be involved.

I turn to the Bill itself. The owner of a property who intends to excavate for or construct building or engineering works to form additional accommodation for any purpose below ground level is required to submit a subterranean development application to the local planning authority. As the Explanatory Notes say, prevailing legislation has been inadequate. An article from building.co.uk appears to confirm the need for legislation. Health and safety inspectors visited 109 London sites in November 2011 in a series of raids, issuing 76 enforcement notices at 40 of these sites. London has seen two deaths in the past 12 months resulting from basement construction projects.

In my view, the Bill makes an excellent start to the problem but I venture to suggest that it does not go far enough. I should like to suggest additional issues that should be taken into account, as brought up by the Ladbroke Association survey report in 2009. The first is to provide for appropriate compensation to be paid by developers on a compulsory basis in mitigation for nuisance. Secondly, councils should be allowed to refuse planning permission where approved noise standards cannot be met. Thirdly, councils should be allowed to take into account the balance between the nuisance

caused by construction in residential areas and the desirability of the development. Fourthly, legislation should allow councils to withhold or delay planning permission to ensure a decent interval between noisy developments in the same area. Fifthly, the Government should implement existing legislation on fees to allow councils to set their own planning fees to take account of the costs of, for example, the employment of independent experts where the local council does not have the expertise. Finally, as several speakers have mentioned, and almost most importantly, sufficient insurance bonds should be in place for the projects.

I welcome the legislation and the plans to strengthen the Party Wall etc. Act 1996.

Lord McKenzie of Luton: My Lords, this has been an exceptionally well informed Second Reading debate on a Bill which seeks to address an issue of increasing significance, especially but not exclusively for parts of London. The noble Lord, Lord Selsdon, is to be congratulated on bringing it forward and on doing so in a characteristically entertaining and informative presentation to us. He has clearly been supported in detail by a number of noble Lords with expertise, including the noble Earl, Lord Lytton, not to mention Pyramus & Thisbe. A number of personal experiences have been expressed in the debate and I think that they add to the importance and significance of the subject.

For me, the extent to which subterranean development creates difficulties began to emerge during our consideration of the then Localism Bill, so in part we have some sense of what the Minister might say in response to today's Second Reading. We should also be grateful for a very helpful briefing from the Library, which included the record of the recent debate in the other place referred to by the noble Lord, Lord Northbrook. In her contribution, my honourable friend Karen Buck gave some data on the scale of subterranean development in a part of London that are worth repeating. She said:

"The St John's Wood Society has identified no fewer than 86 basement applications in that corner of NW8 between October 2010 and September 2011, plus 10 repeat excavations; Hamilton Terrace alone has 13 applications".-[*Official Report*, Commons, 8/11/11; col. 65WH.]

The problems with subterranean development have been well aired in today's debate. Such developments, as we know, are particularly driven by high property values—hence the focus on parts of London, particularly inner-city London. Generally the problem is not only the end result of expanded accommodation situated underground, even though the footprint may extend way beyond the footprint of the house itself, although of course that can impact on the watercourses and other substrata facilities. Often the key problem is the process of development: the vast excavation works; the heavy trailer traffic; damage to party walls; and the sustained and prolonged noise and pollution. We have seen neighbourhoods blighted by a whole succession of such developments.

An area which has been touched on by some noble Lords and which is of particular concern arises in connection with health and safety, and I am pleased to see the

provision in the second part of the noble Lord's Bill. The data have already been given but our briefing pack includes the information that recent HSE inspections showed that a third of basement construction sites were found to be unsafe, and more than half of the prohibition notices served dealt with the risks of workers falling from height either into unfenced excavations or through unprotected floor openings. As we have heard, there have been two fatalities during the past 12 months resulting from basement construction projects. This is, frankly, unacceptable.

From my brief discussions with the HSE during the passage of the then Localism Bill, it would seem that the legislation in this respect is considered to be fit for purpose, as are the 2007 CDM regulations. It is their application that needs attention. Of course, responsibility sits not just with the contractor but with the client. Sadly, I am bound to say, all too often we hear from Ministers that health and safety is all about unnecessary red tape. It would help if we heard a little more about the need for rigorous enforcement and compliance.

The Bill before us contains a number of very reasonable propositions but some, in our view, are not. Requiring consultation with the Secretary of State for the deeper proposed developments seems to run contrary to the localism agenda. We are also not clear about the purpose of requiring HMRC to determine the current value-presumably pre-subterranean development-of the property once approval for the development has been granted. I am not sure whether the noble Lord is proposing that we tax the uplift that arises. That is an interesting proposition.

We have the benefit of the Government's response to a variety of amendments to the then Localism Bill on subterranean development, and these amendments are now very much reflected in the Bill before us. The tenor of the response was that additional legislation is unnecessary. I do not believe the Government said that there is no role for government in it but that what is there is broadly fit for purpose. I understood that the proposition was that, one way or another, the existing provisions are sufficient. If this remains the Government's position, it would be good to hear from the Minister today why they are not more forcefully or routinely applied.

Why, in the Minister's view, is more use not made of Article 4 directions in relation to permitted development rights, construction method statements, requests for impact statements-for example, on the local water table-wider consultation requirements with neighbouring properties, and the issuance of guidance? What assessment have the Government made of the extent to which these opportunities are taken up? To what extent is it considered that the willingness of local planning authorities to constrain some of the subterranean development is related to the involvement of those with deep pockets, as well as deep basements? Finally, as we await the NPPF, how do the Government consider the presumption in favour of development plays out in these circumstances?

The Bill has good intent. It may not be the best way forward in all respects but its examination may help to identify improvements, such as building regulation revision, that can be made to how things operate today. As the noble Lord, Lord Jenkin, said, this is an issue for today, despite the very interesting historical references that we have heard.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): My Lords, I would like to start by adding my appreciation to my noble friend Lord Selsdon for introducing this Bill to the House. His commitment to this difficult issue is to be applauded. I am pleased to have the opportunity to respond to the debate today and to assure noble Lords that I have listened very carefully to the views that they have expressed.

I fully understand that the issue of subterranean development is one which excites anyone who is affected by it. It involves many aspects of planning and regulatory controls, particularly during the construction process. Those include, of course, noise and general disturbance, as well as issues about the consistency and effectiveness of enforcement. All those issues have been raised this morning. Noble Lords will be aware—indeed, their attention has been drawn to it—that for some years I sat on the planning committee of the Royal Borough of Kensington and Chelsea. At that time, I was often taken aback by the scale of the new basement developments that were being proposed. They were frequently to be used as additional accommodation, but much more often for swimming pools, gyms and home cinemas, involving extensive excavation. I know that it is those types of basement extensions that are of great concern but most of them will, of course, require planning permission.

The noble Baroness, Lady Gardner, drew attention to the fact that the Royal Borough of Kensington and Chelsea has its own guidance. Indeed, we just heard that Hammersmith and Fulham also have theirs. It is a requirement, at least from the Royal Borough of Kensington and Chelsea, that when planning permission is required the application is accompanied by a series of reports from engineers and hydrologists to ensure that the excavations can be safely carried out. It can be done and is already being done. I take the concerns most seriously and do not underestimate the disturbance and distress that subterranean development can cause. I know that this is a particular problem in the four central London boroughs—Hammersmith and Fulham, Westminster, Kensington and Chelsea, and Camden, where this type of development is most prevalent, but I fully accept that this is a creeping problem and is bound to appear elsewhere.

Noble Lords will recall that during our consideration of the Localism Bill, I committed to explore with representatives of those affected in these boroughs how we could make the provisions that already exist work better. I am very grateful to those noble Lords, including the noble Earl, Lord Lytton, and residents societies who have worked with me on this and, of course, the noble Lord, Lord Selsdon. We have met on a number of occasions to consider their concerns and possible solutions, and my officials have been following up on commitments that we have made. Just last week I had a very productive meeting with Members of Parliament of the boroughs in London that are most adversely affected. The Member representing North Kensington, Karen Buck, and Mark Field generated a debate in the other place. They were accompanied by residents who had personal experience to share and solutions to propose. Such discussions will continue as we strive to ensure that all those with the power to act do so in the best interests of those experiencing the greatest problems. As part of this work, I intend soon to convene a meeting with the London boroughs most

affected to see whether we can find a blueprint for a common code of practice and how they can support each other in this and in disseminating good practice.

It is also true that local plans and neighbourhood planning will be able to deal with this issue. It is extremely important that this matter is taken up in that regard. I would like to take this opportunity to pay particular tribute to the local residents groups. They have worked tirelessly across neighbourhoods to ginger-up support from developers and local authorities to try to prod them to establish considerate development. I was interested to hear from the noble Lord, Lord Rodgers, that Highgate has now joined in. I shall make a note of that.

Residents associations are perfectly realistic in recognising that subterranean development will happen, and that in most cases, when basement work is complete, there are no visual impacts. But, as noble Lords said, their concern is that there may be many months during the construction period when neighbours can be left at risk of noise, disturbance, and potential damage to their properties, and they are frustrated by their impotence to deal with it. We recognise that neighbours and local residents are right to expect effective and responsible management of development and swift action when things do not go the way they should. Legislation already provides for most of the solutions to these problems if it can be, and is, used in the right way.

The Bill's provisions for a new consenting process for subterranean developments in many ways replicates the requirements of the existing planning system. When permission is required, proposed development can be assessed against locally agreed planning policies that should reflect the priorities of the area. Importantly, conditions can be applied by the council regarding the control of the development. Where permitted development rights are considered to apply, the local authority can, by making an Article 4 direction, as has been already suggested, ensure that they can also bring such development under their control. I hear what my noble friend Lord True says, and I have heard it said, that Article 4 is not always an easy thing to do, or the possibilities of compensation arising from it. The Article 4 directions have been made much easier in recent times for local councils to apply and for the restriction on the compensation that can be sought.

The Bill sets out the information which a developer must submit as part of the new consenting process. I am pleased to reassure this House that developers can already be required to submit much of this information as part of the planning application process. Similarly the Bill replicates the existing requirements to consult neighbours and other interested parties. The provisions in the Bill for consultation between the parties and the resolution of disputes serve the same purpose as the Party Wall etc. Act, which already applies to most subterranean development work, and the new requirements under the Localism Act for any developers to consult neighbours in the local community before undertaking work. That should ensure that a permitted development does not come as a surprise to the adjoining neighbours. It is recognised that a detailed and strong party wall agreement between the building owner and neighbours is an essential measure. That should ensure that all parties are clear on the detail of the work being carried out, the time and manner of executing any work and the arrangements for resolving any disputes, including compensation in some cases. I hope that the noble Earl, Lord Lytton, will agree with me. If he does not, we need to look at it. Compensation is something that can be negotiated. It is equally important

that such agreements are complied with and that those in breach can be held accountable.

I am pleased to have the opportunity to discuss with the Royal Institute of Chartered Surveyors its experience of party-wall agreements. The noble Earl, Lord Caithness, has already done so and the noble Earl, Lord Lytton, has clearly been involved in what we have been talking about. I can say to them both that we will certainly explore further the issues of bonds and insurance, although I fear that this will need primary legislation and time may not be available. We need to see whether there is a clever way of dealing with this.

I hope that I have indicated that rather than creating new powers, we need to see that the existing ones can be strengthened or made better known. For example, the role of building control in inspecting the development to ensure that it complies with the performance standards set out in the Building Regulations is really important. Similarly the environmental health departments should be ready to act under the statutory nuisance regime set out in the Environmental Protection Act 1990, when there is excess noise, dust and other nuisance. The Control of Pollution Act 1974 also allows councils to enforce on matters like equipment, hours of working and noise levels, in accordance with a code of conduct approved by the Secretary of State for the Environment, Food and Rural Affairs. Finally, the safety of a building can be ensured by authorities under the provisions in the Building Act 1984 which allows local authorities to take action in respect of a dangerous structure.

These provisions are designed to provide protection against the adverse impacts of development, including subterranean development. However, they will be useless if local residents do not know about developments, or how to access help from appropriate sources. It is therefore essential that we find a way not only to disseminate the information but to have it easily available with good contact details. Nobody wants to be fishing around, and be passed from pillar to post, when they believe that enforcement action is required.

It is clear that there are regulations and legislation that local authorities can enforce. There is legal if not totally adequate redress under the party wall Acts, and it is essential to impress on those who represent the interests of landowners that they must act responsibly. Local provisions and protocols must ensure that those who carry out subterranean development, whether they do so with or without planning permission, are aware of their responsibilities to the local community, and of the consequences of failing to take these responsibilities seriously. I have heard noble Lords say this morning that in many cases this is not wholly effective, and we will need to look further into it. Development from which some people take benefit must not unreasonably affect others.

As the noble Lord, Lord McKenzie, said, it is consistent with the theme of localism that local authorities should produce their own guidance and should offer other services to cascade information to ensure that developers and neighbours are alerted to the controls that exist and to the means by which they can be accessed. I have already spoken of some of the work that we in central government are doing to try to ensure that the existing laws and regulations are recognised. We are also looking to see how guidance from organisations such as the Royal Institute of Chartered

Surveyors may be harnessed and disseminated. This will be complemented by our work with other organisations that have an interest in the construction of basements, to cover the concerns that have been raised. We will also review the party wall Acts to see if they need to be strengthened, and the guidance that the department issues.

I hope I have made it clear that further legislative measures are unnecessary. However, we must find a way to ensure that all the issues that have been raised in the Bill are taken into account, to see where legislation may need to be updated. Building Regulations are going through scrutiny at the moment. The Royal Institute of Chartered Surveyors may want to respond to the consultation.

I end by thanking my noble friend Lord Selsdon for introducing the Bill, and noble Lords who took part in the debate. I hope that the discussion today will serve to highlight both the problem and possible solutions. I appreciate that there will be a Committee on the Bill. At present, the Government will not be able to support the Bill into legislation, but we are committed to continuing to help local authorities and residents find an acceptable way of going forward.

Lord Selsdon: My Lords, no one could have received better support than I have received for the Bill. However, the credit belongs to all the people outside the House who have been concerned—so concerned that I set up a second e-mail address because I was receiving so many complaints and proposals. The Minister's response was just what I hoped for, as was the response from the noble Lord opposite. I am grateful to all my noble friends who spoke. I regret that we have gone seven minutes over the time specified in my party-wall agreement with the noble Lord, Lord Steel, but I think it may have been helpful.

Finally, I will declare a couple of interests. I wrote everything that I wanted to say. I typed every word in the Bill and used up government cartridges. That is probably acceptable, but two cartridges is practically the cost of a new printer. Talking to my noble friend here, who is a great surveyor, I learnt that he had been in the Department of the Environment. My mother was the first lady to be Lord Mayor of Westminster. She had a House in Tufton Street. This problem started with a hairline crack on the top floor, which got bigger and bigger until you could put your hand into it. Some people called it heave and hump. I was told that it was probably the responsibility of the Department of the Environment for building an enormous building nearby. I wonder whether, if I wrote the Minister a letter, we might be able to make a retrospective claim for damages.

I have referred to the first part of the Bill. In the brief, I referred to the impact that the Thames tunnel may have. I declare an interest here. Noble Lords may not know that I started my life in water and sewerage. I also got very worried about cholera when I worked in a research company in Broadwick Street, which was the source of the original cholera outbreak. I went to Egypt and got guppy tummy. I wrote to the Egyptians and to the Prime Minister. She kindly gave me £50 million and other people gave me £2 billion. We set up British Waste Water to do the greater Cairo waste water project. It was the biggest subterranean development ever in the world. I

did not want to put that before your Lordships earlier because the surveyors would have pulled me apart.

The details of the Bill are on the website of Pyramus & Thisbe, who are a really great gang. I have said everything I can. I hope that we can now have a period of consultation. In Committee noble Lords will be able to let off steam and take the heat out of the argument. We will produce yellow jackets and hats for any noble Lords who may wish to go and conduct inspections. I will probably have an argument with the Clerks about whether we can have our symbol on the hat. The idea is to get rid of sheet piling and make people take everything out by hand. If the heat can be taken out of the argument, we will get a long way.

Bill read a second time and committed to a Committee of the Whole House.

11.47 am

Sitting suspended.