

GR 52/09



Isle of Man Government

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REPORT TO TYNWALD BY THE DEPARTMENT OF LOCAL GOVERNMENT AND THE ENVIRONMENT

REVIEW OF THE PLANNING SYSTEM

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Foreword

This report meets the Department's commitment to lay before Tynwald the report of the Improvement and Development Agency (IDeA). The Agency was commissioned to undertake an independent review of the operation of the planning system, following a Tynwald motion in October 2007. The Department's report includes comments on each of the IDeA's recommendations, and proposals for making changes to the system. Some of these are comparatively minor (and in some cases have already been put in place), some require new Orders or Regulations, which will need to be brought before Tynwald for approval, and some affect Government generally, rather than just the Department. However, I feel confident that once the complete package of changes has been put in place, we shall have a system which is effective and efficient at both the strategic and operational levels.

J P Shimmin
Minister for Local Government and the Environment

To: The Hon. Noel Q. Cringle, President of Tynwald, and the Honourable Council and Keys in Tynwald assembled.

Review of the Planning System

1 Introduction

- 1.1 The last significant changes to the planning system were made in 2005, when Parts 2 – 5 of the Town and Country Planning Act 1999 were brought into operation, and Tynwald approved the associated secondary legislation. At that time, the then Minister for Local Government and the Environment undertook to review that secondary legislation after an appropriate period of operation.
- 1.2 In October 2007, Tynwald approved a motion which called for a Select Committee to investigate the handling of a particular planning application (concerning a site known as “The Poacher’s Pocket”), and for there to be an independent review of the operation of the planning system. The Select Committee duly undertook its investigations and reported with recommendations, which were approved by Tynwald in April 2008.
- 1.3 To meet the terms of the second part of the Tynwald motion, the Department commissioned a body called the Improvement and Development Agency (“IDeA”) to conduct an independent review. Those of the Select Committee’s recommendations which were of a general nature were also referred to the IDeA.
- 1.4 The report from the IDeA was received in August 2008, and, in accordance with the Tynwald motion, was published by the Department. At the same time, the Department published a consultation paper seeking comments on both the report (and its recommendations) and the changes which were made to the planning system in 2005. In October 2008, the Minister advised Tynwald of the progress which had been made in relation to the review, and undertook, once the responses to the consultation had been assessed, to lay before Tynwald the IDeA report and to present the Department’s comments and proposals for change.

2 The IDeA Report

- 2.1 The report from the IDeA has been published, a copy of the report is attached as Annex A and it is now formally laid before the Court. This report sets out the Department’s proposals for responding to each of the key recommendations set out in part 2 of the IDeA report, and to the observations and suggestions in Appendix 1 (which deals with the “Poacher’s Pocket” report) and Appendix 2 (which relates to the operation of the Planning Committee).
- 2.2 These proposals have been formulated having regard to firstly, the Department’s commitment to adopt the recommendations in the IDeA report unless there is good reason to do otherwise, secondly, the responses to the Department’s own consultation, and thirdly, experience of using the current system since 2005.
- 2.3 The next section of this report schedules each of the key recommendations and suggestions made by the IDeA, followed in each case by the Department’s response.

3 **IDeA Recommendations and DoLGE Comments and Proposals**

3.1 **IDeA Recommendation A: Prioritise research and data collection to ensure a robust evidence base to underpin policy: consider if there should be a government-wide resource for this; agree firm protocols with other departments to produce and provide data.**

The Department proposes that the apparently sound idea of establishing a government-wide resource for research and data collection should be considered by the Council of Ministers, whilst the Department will itself formulate and propose to other arms of Government appropriate protocols which would improve the preparation of Area Plans and policy revisions.

3.2 **IDeA Recommendation B: Deliver a robust planning policy framework: reconsider whether fewer Area Plans would provide a more sustainable work programme for planning policy; consider if more resources may be needed to deliver a more up-to-date policy framework within a reasonable timescale; develop associated design and sustainability guidance.**

The Department is reviewing the Area Plan programme on the basis of experience with the Draft Plan for the South. Additional staff resources were provided to complete that Draft Plan, and the Department will review and prioritise resources for the Plan for the East. In 2011, following the census, work will commence on the first review of the Strategic Plan, and further consideration will be given to the best way of completing Area Plan coverage of the Island. The Department recognises the need for design and sustainability guidance, but also for other Planning Policy Statements. Draft Statements relating to Flood Risk and Landscape Character have recently been published, and others will be prioritised as resources permit.

3.3 **IDeA Recommendation C: Strengthen leadership within the Department: agree priorities for managers to ensure that managers operate at appropriate strategic (chief executive and director) and operational (senior planner) levels; improve communications within the Department, providing more opportunities for staff to discuss changes and contribute ideas for continual improvement; agree priorities for the planning service; ensure that outside influences are not allowed to postpone or distract from service improvements.**

Having senior officers operating exclusively at appropriate levels is of course sensible but it is dependent on resources and, indeed, on workloads. The Department recognises this issue, and is establishing priorities and improving communications, but it is unrealistic to suggest that all outside influences could or should be ignored.

3.4 **IDeA Recommendation D: Strengthen the strategic contribution of planning across government: agree with the Council of Ministers and Chief Executives of other Departments that the Director of Planning should be consulted at an early stage to help shape the development of strategy involving any spatial elements; for example, seek strategic input from planning in the present assets review.**

The Department agrees with this proposal and will in due course prepare a paper for consideration by the Council of Ministers.

3.5 **IDeA Recommendation E: Make changes to the operation of the Planning Committee (this appears in the schedule of Key Recommendations, but is detailed in Appendix 2 to the report).**

The Department's responses are summarised in paragraph 3.12 below, which also sets out the IDeA's detailed recommendations in relation to the Planning Committee.

3.6 **IDeA Recommendation F: Consider and consult upon our suggestions for developments to the third party right of appeal (paragraph 41) to maintain an effective process while avoiding undue delays.**

The IDeA suggested removal of the right of appeal from other Government Departments: since such appeals are rare (1 out of 207 in 2008), and the mechanism is generally perceived as being in accordance with open government, the Department does not propose to accept this suggestion.

Also suggested was a requirement for appellants to state their reasons for the appeal: this is clearly a helpful idea, and the Department proposes that the Development Procedure Order should be amended, not only to include this requirement, but also to provide for rejection of the appeal should the stated grounds not relate to material planning considerations.

Charging for making an appeal: the Department has concluded that this may be perceived as favouring commercial developers, that it would exacerbate neighbour disputes, and that it would be difficult to administer in the case of multiple appeals. The Department therefore rejects this suggestion.

A liability for an appellant to pay part of the costs of an appeal that fails: the Department proposes that the current provision for awarding costs against an appellant who asks for a hearing but fails to attend should be broadened to include spurious and vexatious appeals, but not any further.

A presumption that an appeal will be dealt with by written submissions rather than by a hearing: the Department can see the attraction of this suggestion in terms of efficiency and cost, but is concerned that purely written processes are less transparent and do not always provide an opportunity for rebuttal or proper testing of evidence. The public consultation undertaken by the Department indicated concern about the use of lawyers at some appeal hearings. This concern appeared to be shared by some Members of Tynwald at the recent Briefing. It appears to the Department that what is needed is a subtler appeal system whereby the nature of the hearing or the use of written submissions is better tailored to the complexity or contentiousness of the proposed development. Accordingly, the Department proposes to include in a redraft of the Development Procedure Order provision for both formal and informal hearings. This draft Order will of course be the subject of consultation and Tynwald consideration.

Restriction of rights of appeal against approvals: the Department judges that this would be widely unpopular, and, indeed, politically unacceptable, and therefore rejects the suggestion.

Removal of the right of counter appeal: in fact, once there is an appeal, all issues are open for consideration, but the Department will consider introducing a right to appeal against a condition without jeopardising the whole approval.

3.7 **IDeA Recommendation G: Provide training and development for Local Authority Commissioners to help them exercise the appeal function effectively as local community representatives.**

The Department recognises the need to do this. Planning issues are included in the Induction Course for Commissioners, but consideration will be given to ongoing training in planning policy, procedures, and law for Local Authority Members and their Clerks. In fact, a start has been made on this with the Municipal Association.

- 3.8 **IDeA Recommendation H: Improve the flexibility and effectiveness of the planning service: make structural changes to the development control and support functions – one flexible team; analyse and categorise work to enable straightforward applications to be dealt with by suitably trained staff other than planning officers; extend levels of permitted development to be similar to levels in comparable (in environment and/or heritage terms) English authorities; prioritise the workload in development control and enforcement; develop a workforce plan setting out needs for current and future skills and staff numbers, to include cover for key individuals.**

The Department accepts the merits of restructuring the planning section, and included a business case in the 2010/11 budget submission. However, the funding is now under review. In terms of Permitted Development, the Department proposes to amend the current Order to include more householder developments such as most window replacements, solar panels, and two-storey extensions (subject of course to design constraints), extensions and alterations to industrial and business premises (including agricultural buildings), and an increased range of operations on Government land, such as schools, hospitals, and the NSC. These amendments will be introduced in stages, with priority being given to those which would be most effective in saving unnecessary costs within the construction industry, the Department, and other arms of Government. The Department is also prioritising its workload in Development Control and Enforcement, although this too is partly dependent on funding.

- 3.9 **IDeA Recommendation I: Strengthen the focus on customer service: set, publish and keep to standards of service for development control and enforcement; set up a user forum and conduct user surveys focused on improving the service to users; consider training for support staff for “one stop” enquiries; introduce a duty planning officer or similar contact arrangements; provide customer care training for staff, and develop a culture of customer care; provide a more comprehensive application checklist and guidance for applicants.**

The Department agrees the principle of all of these suggestions. Priority will be given to setting up a user forum, which should inform the detailed content of the other proposals.

- 3.10 **IDeA Recommendation J: Manage performance effectively for the benefit of the public: improve routine performance data collection and analysis in development control and enforcement; set, monitor and manage “hard” performance targets taking account of risks and complexity; clear the applications backlog – using support staff appropriately for straightforward applications; consider if some external sources may be needed to tackle this.**

The computer system in use within the planning office enables routine performance data collection, and such data are now being regularly analysed at management level, monthly Directorate meetings, and quarterly review meetings of the Planning Committee. The “backlog” has been reduced, but the setting and monitoring of performance targets is linked with securing adequate staff resources. The Department has recently advertised for two planning assistants, and is hopeful that successful appointments will enable it to accept and act on this recommendation in full.

- 3.11 **IDeA Recommendation K: Develop a comprehensive e-planning strategy to include public accessibility and standards of data etc.**

The Department fully supports introduction of e-planning in all respects, but is mindful of the costs, the practical difficulties, and of course the need to maintain written submissions etc. for use by those members of the community without access to computer systems. We hope to introduce next year a facility for all new planning applications to be viewed on-line, but

electronic submission of applications, and full use of developed systems for area plan preparation will, realistically, take rather longer, particularly in the light of funding constraints.

3.12 **Appendix 1 (Response to the "Poacher's Pocket" report)**

The IDeA was asked to cover in its report a number of issues raised by the Tynwald Select Committee on the "Poacher's Pocket" planning application. These issues, the IDeA's suggestions, and the Department's responses are set out below.

- (a) **Is there adequate resourcing for enforcement activities to enable monitoring to be carried out?** The IDeA report draws attention to a good-practice note on enforcement, which was published by the Planning Advisory Service, and which deals with resourcing and prioritising enforcement. The Department has considered this, and has now approved and published a Planning Enforcement Policy, copies of which have been recently distributed to Members. Administrative support for the Enforcement Officer has been increased, and it is hoped also to increase the support from Development Control Officers and the Building Control Section once these sections are themselves adequately resourced. The Department accepts that the credibility of a planning service as a whole suffers if its enforcement record is perceived as poor or inadequate, and that there are considerable benefits associated with targeted, pro-active enforcement.
- (b) **Which applications and which conditions can/should be dealt with under delegated powers?** The IDeA report draws attention to various schemes of delegation used in other administrations, and identifies the main issue as transparency. The Department has prepared a written scheme of delegation, has trialled this for several months, has amended the scheme in response to comments and suggestions from the Planning Committee and its officers, and is now conducting a final trial before adopting and publishing the scheme. The Department accepts that there should be a firm, clear process for discharging conditions, and that this should be published along with the scheme of delegation.
- (c) **Whether interested parties should be permitted to speak at Planning Committee.** The IDeA report judges that public speaking at Planning Committee meetings is a valuable contribution to openness. The Committee has attended a meeting of the Planning Committee in Kendal where public speaking is allowed and accepts that properly controlled public speaking can assist the process. The Department supports the introduction of controlled public speaking, but is concerned to ensure that all practical and legal issues are first addressed by proper resources and training.
- (d) **Whether the review stage should be re-introduced into the appeals process.** The IDeA report concludes that, if their various suggestions for change are implemented (including public speaking at Planning Committee), there would be no need to return to the Review stage. This issue was raised by some Members at the recent Briefing, and the Department is conscious that, as it used at one time to operate, the Review process was not without merit. However, now that it is no longer possible to accommodate amendments partway through the process, and with the intention to introduce public speaking at Committee, the Department shares the IDeA's view, and does not propose to reintroduce the Review stage.

- (e) **Consideration of whether it is appropriate or practical for other means of challenge to planning decisions to be devised in order to achieve redress where the planning department has been found to be at fault.** The IDeA report draws attention to the operation of the Local Government Ombudsman in England. Since this issue is arguably one which relates to maladministration in any arm of government, not just the planning office, and since there is a Select Committee sitting to consider Mr Whittaker's Petition for Redress of Grievance (which arises from a particular example of this sort of issue), the Department suggests that it would be appropriate to postpone debate until the Select Committee reports.

3.13 **Appendix 2 – Planning Committee changes**

The IDeA report makes suggestions for a number of improvements in the way the Planning Committee operates. These are focused on making the Committee more accessible and better understood by the public, and fall into four categories, which are set out below, together with the Department's responses.

- (1) **Improve the environment for the Committee meeting.** The Department has adopted four of the six suggestions, which relate largely to the layout of the room and the display of information. The other two suggestions, for a public address system and a hearing loop system, will be considered, having regard to the availability of venues which are already fully equipped, and, of course, funding.
- (2) **Improve the documentation for the Committee.** All of these suggestions have been, or are being adopted.
- (3) **Improve the operation of the Committee meeting.** The Department accepts these suggestions, but is anxious not to make meetings needlessly formal. Public speaking will be introduced as soon as resources and training have been organised.
- (4) **Other factors.** Publication of the selection criteria for membership of the Planning Committee is a matter for the Council of Ministers, which appoints the Committee. The Department's scheme of delegation will be published once it has been finalised. The Department will discuss with the Council the introduction of Personal Development Programmes for Members of the Committee.

4 **Conclusion and Recommendation to Tynwald**

The above sets out the Department's comments on, and proposals for responding to the Planning Peer Review report produced by the Improvement and Development Agency. The Department is seeking Tynwald support for these proposals and some of these involve amendment of existing Orders or Regulations, or making new Orders or Regulations. Drafts of all such Orders or Regulations will be subject to public consultation and Tynwald approval.

Accordingly it is recommended:

That Tynwald notes and supports the comments and proposals of the Department of Local Government and the Environment as set out in its Report on the Review of the Planning System (GR52/09).



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