

10. **THE ISLE OF MAN PLANNING SYSTEM - THE EFFECT OF THE PLANNING SYSTEM AND PLANNING PROCEDURE ON DECISION-MAKING IN 1991-1992 AND 2000**

i) **Introduction**

10.1 In considering the extent to which the planning system itself may have contributed to or facilitated the irregularities in decision-making at Mount Murray in 1991-1992, it is relevant to distinguish between planning procedures, which include initial decision, review and appeal, and administrative procedures for purposes of taking a planning application through the planning system. So far as the latter are concerned, the Commission is of the view that the absence of any formalised administrative guidance, either for officers or members, or of any form of Standing Orders controlling the actions of the Committee and its Secretary in particular, created circumstances where proper and professional decision-making could be and was undermined. In the case of the former, the planning procedures remain largely unaltered today, based more on habit rather than on intrinsic merit.¹ The Commission is of the view that there is considerable scope for a rethink under the review to which we refer later.

ii) **Planning Administration**

10.2 Administrative weaknesses in 1991-1992 as referred to earlier in section 8 have become evident to the Commission as being present throughout the system. These arose partly because such systems as existed were not well operated as with lapses in the date stamping of incoming application plans, and partly because the system itself contained significant and, in the view of the Commission, unnecessary limitations. Amongst these were the parallel files created in the office and the fact that Planning Officer reports and recommendations were often made with little awareness of representations and objections.

10.3 Particular concern, however, attaches to the absence of any Committee reports being made available to the members prior to a meeting, even for larger and more complex applications as at Mount Murray where a significant departure from Development Plan zoning was involved. This would have left the Committee ill-informed and therefore ill-prepared to take decisions, especially when combined with the practice of adding late items to the agenda without notice and the drafting of conditions outside the Committee without later endorsement by members. The use of set standard conditions which are commonly attached to planning permissions to cover usual control requirement is normal practice in development control planning departments. Special conditions are those which are not part of this standard set of conditions and may be applied to cover individual requirements according to the circumstances of a particular case. The members themselves generally do not appear to have sought information to achieve a better understanding of documents being referred to, and the Commission finds it difficult to see how any responsible and comprehensive consideration of the main applications at Mount Murray could have been achieved in these circumstances. It is acknowledged that particular agenda items could be considered further at a later meeting² but in the case of Mount Murray at least, there is no evidence that this was felt to be necessary.

10.4 So far as the Committee itself was concerned, reference has been made above (paragraph 8.8) to the absence of guidance to new members as to their role and

¹ Evidence of Mr Sinden Q12 Transcript Day 10 page 87

² Evidence of Mr Sinden Q10 Transcript Day 10 page 92

responsibilities and the consequent reliance on Planning Officers' advice and recommendations. It bears repeating that whilst the trust placed in their officers by members of the Committee in 1991 and 1992 was on the one hand a reasonable sign of a working relationship, the evidence to the Commission is that, in practice, this has contributed to an absence of probing and questioning by the Committee of matters put before them, even to the extent of not asking for basic documents as their ultimate responsibility for decisions required.

- 10.5 The Committee was not helped in this regard by the volume of business which it was required to consider and determine. Details of the numbers of applications handled by the department in 1991 are not before the Commission but some inference can be obtained from both the 1994 Report of RTPI Assessors and a report by the HM Treasury Management Systems Division of the same date.³ Both reports show the number of applications in 1993/94 as between 1,700 and 2,000 which, for a population of some 77,000 was well above comparable ratios (typically 200,000 population in the United Kingdom for the same number of applications). The current number of applications is some 2,500 per year⁴ and it may be surmised on the trends these figures show that applications in 1991 were likely to be somewhat less than in 1994, but would still have been relatively high, placing considerable pressure on the office staff and on the Committee notwithstanding the delegated arrangements to the then Director. The evidence to the Commission by Mr Brown, the present Speaker and the minister at the time, served to confirm this pressure,⁵ indicating that there was some imbalance between staff resources and workload, and/or that too many applications were reaching the Committee due to the limited delegation arrangements and the narrow scope of permitted development rights.
- 10.6 The Commission does not consider that either excessive numbers of planning applications or any of the other factors mentioned above would or should have, by themselves, induced irregularity in decision-making. Collectively, however, the inadequacies of the administrative arrangements in force at the time provided a context in which the evaluation of planning applications was consequentially at times inadequate and superficial and not measured or professional as it should have been.

iii) Implications of Planning Procedures

- 10.7 This report has already commented (in section 8 sub-section (v) above) on the unusual nature of the system of initial applications, review and appeal in the Isle of Man. There was no disagreement on the part of officers that the review process led to a large number of applications being in effect considered twice (presumably most of those receiving an initial refusal or third parties unhappy with an initial approval). This would have put considerable pressure on already limited resources but was not a reason for planning decisions to be inadequately considered and it remains the Commission's view that this singular approach to the handling of planning applications was not a direct cause of irregularities at Mount Murray. Indeed, it might be argued that the review of the outline application at Mount Murray (PA 90/1842) at the Committee meeting of 12th April 1991 gave a second opportunity to understand the underlying intent of the proposal which was, of course, not taken.

³ RTPI Assessors Report October 1994 Document L55 Section 5 and Report by Management Systems Division, HM Treasury "Review of the Planning Office, DOLGE, IOM" Planning Office: staffing levels, functions and workload" Paragraphs 3.19, 3.20 and Annex A Document L67

⁴ Evidence of Mr McCauley P12 Notes Day 6 page 19

⁵ Evidence of Mr Brown P14 Notes Day 4 page 69

- 10.8 The detached position of the minister relative to planning procedures (paragraph 8.21 above) arises not as a result of the review element but almost entirely as a result of his or her role in determining appeal recommendations put forward by Inspectors. In the Commission's judgement, this leaves the department in a position where, with respect to a very significant and publicly sensitive part of its work, it has effectively no-one to look after its interests at ministerial level or, where appropriate, at the Council of Ministers. More significantly, in the case of Mount Murray, the position of the minister would have made it difficult for him to be aware of the irregularities which were taking place, and prevented him from advising or intervening at the outset with regard to the most appropriate procedure for dealing with the initial application.
- 10.9 The Commission's view on this derives from the standpoint that the Mount Murray proposal raised economic issues of Island-wide importance whilst having serious implications for Development Plan zoning. Such circumstances should have alerted the Committee, prompted by the officers, to give consideration to the Special Inquiry procedure (sub-section 8 (vii) above) provided for under the 1981 Act. The importance is also illustrated by the excessive pressure which another minister, Mr Bell in the Department of Tourism, sought to bring on the Planning Officers (which is considered later in this report). The importance is also affirmed by Mr Bell's own evidence⁶ and the Commission consider that the Special Inquiry procedure should have been used. That it was not may be due at least partly to the detachment of the Committee and minister.
- 10.10 It should not be presumed in the light of the above that had the minister not been constrained from doing so he would necessarily have advised that a Special Inquiry was appropriate. Differing views were presented to the Commission about whether such a procedure would have been justified. The former Chief Secretary felt it was not so justified on the grounds of a previous tourist permission.⁷ The current Director of Planning & Building Control took a contrary view based on the scale of development and its political sensitivity.⁸ The important point either way is that the opportunity for such consideration was not taken, as it might have been had it been possible for a ministerial view to have been sought.
- 10.11 The Commission considers the continued detachment of the minister from a large part of his/her area of responsibility to be anachronistic and a matter which should be looked at by the Council of Ministers. There are a range of options, although the Commission favour an arrangement whereby it is the inspector who makes decisions on appeal rather than the minister but with the Council of Ministers having reserve powers in defined circumstances to require an appeal to be dealt with by way of a Special Inquiry, or under the 1999 Act some equivalent type of inquiry procedure, if it so chose, thereby retaining the ultimate decision to itself, where proposals were deemed to be particularly sensitive. As with any administrative decision, it would of course be open to legal challenge on the basis that it was unlawful, should there be justification for such challenge
- 10.12 In terms of the present procedures within the planning office, the most noteworthy feature is the fact that the three-stage approach to planning applications of initial decision, review and appeal remains virtually unchanged from that which was in force at the time of the Mount Murray applications. The impression given to the Commission is that the opportunity for review means that the initial stage may in some cases have less importance attached to it than it otherwise might have. The

⁶ Evidence of Mr Bell Q9 Transcript Day 31 page 37

⁷ Evidence of Mr Kissack P3 Notes Day 2 page 22

⁸ Evidence of Mr McCauley P12 Notes Day 6 pages 35-36

Chief Executive of the department referred, for example, to “planning procedures being such that matters can always go to final review.”⁹

- 10.13 Notwithstanding some evidence from Planning Officers referring to the benefits of a review stage, the Commission cannot see any justifiable reason for retaining such a process, bearing in mind that an appeal can still be made. The Commission accepts the view of the present Director of Planning and Building Control that there would be an increase in the appeal workload,¹⁰ but it feels that this would be more than offset by dispensing with the review stage if the initial stage was more open and transparent than it is now. A view similar to the one we have expressed is made in the consultation document “Modernising the Planning System” and is referred to in 15.28 below. If such a change were to be combined with more extensive permitted development rights to reduce the number of applications coming to Committee, the plainly over-stretched position of staff with regard to workload could be eased. The consequence would be that sufficient (or at least more) time would be available for staff to deal more thoroughly with the various tasks which they have to carry out.
- 10.14 The other distinctive feature of both past and current planning procedures is that third parties have these rights of review and appeal. The evidence given to the Commission on the value of such a right is limited, but the right is perceived to be of value in reducing appeals, whilst third parties can in some cases help to ensure that all views are fully considered. Control over the determination of who are the interested parties also remains with the Planning Committee and, were it to be the case in future that the initial and review stages were to be dispensed with, then third party rights could be confined to the appeal stage, further simplifying the system and reducing workload. The existing right at the initial stage for persons to make objections or representations (as set out in paragraph 4 (2) of Schedule 1 to the 1982 Order) should not of course be lost.
- 10.15 Retention of third party rights has implications with regard to one other feature of existing procedures which is the exclusion of the public from all meetings of the Committee. The origins of this feature are obscure but officers and members alike have in evidence¹¹ seen advantages in retaining it, largely on the grounds that members feel less inhibited or pressured than they might otherwise do in public. However, there are in the Commission’s view, clear reasons to suggest that the matter be reviewed. First, the process of planning is, or should be, in the public interest and it is difficult to see how the necessary degree of transparency can be achieved if decision-making is not open to public scrutiny. Second, it is the responsibility of the Committee under paragraph 6 (3) of Schedule 1 of the 1982 Order to determine interested party status (currently for both review and appeal purposes). That is a matter of some sensitivity which, in the Commission’s opinion, should be conducted in an open manner if resentment and suspicion are to be avoided. The Committee needs to be seen to be consistent and open in the reasons for accepting or denying such status and this would not be readily apparent where the public are excluded.
- 10.16 Related to the issue of an open Committee is the matter of its size. The present Committee comprising one Member of Tynwald and two lay members is small compared with other jurisdictions, and, in practical terms alone, it must at times make

⁹ Evidence of Mr Hamilton P10 Notes Day 5 page 12

¹⁰ Evidence of Mr McCauley P12 “Review of the Planning Process” 26.3.2002

¹¹ Evidence of: Mr Sinden Q12 Transcript Day 10 pages 13 & 14; Mr Watson Q3 Transcript Day 7 pages 80 & 81; Mr Crowe Q21 Transcript Day 13 page 35; Mr Downie Q19 Transcript Day 15 page 16; Mr Faragher Q8 Transcript Day 8 page 99.

it difficult to maintain a quorum, and also be onerous on the members trying to maintain efficiency of Committee business. More importantly, it is, in the Commission's judgement, difficult for such a small body, particularly where lay members dominate, to reflect reasonably the full range of Island interests, whilst a larger Committee would help to seek to ensure that all aspects and implications of a proposal were thoroughly considered.

10.17 We return to this matter in our recommendations but it is appropriate to mention here that, having regard to the population of the Island, we favour a Committee having a maximum size of eight which should (if practicable) include two political members, to allow for both deputising and continuity of government input. With regard to all of the above, the Commission has noted that the department has recently commenced a public consultation process based upon a document "Modernising the Planning System", published in August 2002. This is to be welcomed and we consider it further in sub-section (v) of section 15 below.

10.18 The last point to be considered in this sub-section is the role and competence of the Committee Secretary. It should, in the Commission's view, be the role of the Secretary to organise and control the business of the Committee in consultation with the chairman and the Director of Planning and Building Control. It should be his or her responsibility not just to advise on matters of procedure but to ensure that the Committee is not acting improperly and not taking decisions outside or in conflict with its statutory remit. The post, in short, is a critical one. In section 11 below we examine the role played by the Secretaries in 1991 which in certain key respects were not effective. Part of the reason for that (but only part) is the complete absence of any induction or training given to the postholders at the time, which we find to be a matter of significant concern. That shortcoming has, to some extent, now been addressed, but we return to this matter in our recommendations.

iv) Planning Policy and the Development Plan

10.19 It has not been the concern of the Commission to examine the Development Plan process or the content of the current Development Plan for the Island except insofar as this impinged on decision-making at Mount Murray. The Development Plan is based on a concept of land use zoning and reference has already been made to the nature of this zoning at Mount Murray (paragraph 8.4) and the weight which may be attached to it as established by the 1982 Order.

10.20 The 1982 Order indicates that zoning is not inviolable and is certainly not tantamount to the planning "law" referred to in Mr Karran's statement to Tynwald on 19th February 2002 and in evidence to the Commission.¹² In the light of that, the Commission sought to establish the degree to which departures from zoning were in practice treated by the Committee as normal or as comparatively rare. The evidence on this is not entirely consistent. Mr Quine, former minister and member of the department, indicated at an early stage of the Inquiry that the 1982 Order was "virtually sacrosanct" and that exceptions (to zoning) were "very rare indeed" and only likely to occur in exceptional circumstances.¹³ Mr Brown and minister at the time of the Mount Murray application, said that "The Planning Committee can consider and make a decision which is different to the zoning on the Plan as long as they have

¹² Document C2 Hansard 19.2.2002 T522 right hand column and Evidence of Mr Karran P1 Notes Day 1 page 14

¹³ Evidence of Mr Quine P2 Notes Day 1 page 74

taken into account and considered why they did not think the zoning within the Plan was appropriate”¹⁴

- 10.21 Mr Watson, Chief Architect and Planning Officer at the same time, stated that a departure from zoning was “Perfectly in order, and perfectly respectable and a regular occurrence”.¹⁵ He explained the contrast between his evidence and that of Mr Quine as due to a change of minister and a change of attitude.¹⁶ However, his evidence also conflicted with Mr Sinden who, when asked whether it was a serious matter to depart from the Development Plan indicated that “It was rare to grant permission other than in accordance with it.”¹⁷ Mr Sinden, it will be recalled, was the Planning Officer who gave the first appraisal report on the outline application for Mount Murray (PA 90/1842)
- 10.22 On balance, the Commission finds it difficult to believe that the policies and zoning of the Development Plan were treated as anything other than fundamental and material to decision-making and found little credible evidence to suggest that departures were a frequent occurrence. It remains the case that, at Mount Murray, the additional 24 acres (9.7 hectares) beyond that zoned and on which permission was ultimately given (PA 90/1842 on review) comprised land of “high landscape value and scenic significance”.¹⁸ Development of such land was and should have been a matter requiring the most serious consideration, including, in the Commission’s view, whether a Special Inquiry was justified. This is a point which will be considered later in this report.

v) Observations

- 10.23 The purpose of this and the preceding sections 8 and 9 has not just been to describe and understand the planning system in 1991-1992 and how it had changed by 2000, but to come to a view as to how far the irregularities which occurred at Mount Murray came about as a result of deficiencies in that system, and on the extent to which subsequent changes by 2000 are felt to be adequate. There is no doubt that administrative procedures within the planning office in 1991-1992 were defective to the extent that they made it difficult for planning applications to be considered thoroughly and professionally by the Planning Committee. It remains the case however that the system, notwithstanding its deficiencies, could have been operated responsibly and clearly. The reasons why it was not are considered in the next two sections.
- 10.24 As to changes introduced by 2000, the Commission consider these to have been of some significance, most particularly through the introduction of Standing Orders. Weaknesses still remained as we have indicated in this section and, in section 15 below, we examine the further improvements made in response to the recommendations of Professor Crow, and, in our recommendations, refer to what further steps we believe should still be taken.

End of Section 10

¹⁴ Evidence of Mr Brown P14 Notes Day 4 page 65

¹⁵ Evidence Mr Watson Q3 Transcript Day 7 page 96

¹⁶ Evidence Mr Watson Q3 Transcript Day 7 page 97

¹⁷ Evidence Mr Sinden Transcript Q12 Day 10 page 32

¹⁸ Mr Sinden Q12 Appendix (1) page 3