12. THE PLANNING AND DEVELOPMENT HISTORY OF THE SITE INCLUDING PLANNING APPROVALS AFTER 4TH OCTOBER 1991

i) Introduction

12.1 With the issuing of the second initial decision notice on 4th October 1991, and irrespective of the perceived validity of such a notice (a matter not raised at that time), the applicants had now secured through various permissions (see sub-section 3 (ix) approval for the hotel and its associated facilities and for 150 houses the occupancy of which could be either for tourism purposes or on a permanent residential basis. They had additionally obtained approval in principle for the golf course together, as in the case of the hotel, with certain supporting facilities. They had, in other words, achieved exactly what the outline application and its supporting documents had envisaged.

12.2 They were however to take things further and in this section we first consider the circumstances surrounding the increase in the number of housing units to 175 which occurred in 1992, and the alteration to certain other existing permissions including the golf course in particular. We also examine the consequences of the imprecise nature of the approval for 150 houses (PA 91/0953) to which we have already referred in section 11, for both individual owners, for the layout of the estate and for certain of its features including trees. Importantly we look at why it was that government and the Committee professed to have been unaware in any formal sense until 1997 of the reality of the residential permission which had been given some six years earlier, despite the alertness and prompting of a number of resourceful individuals and concerned organisations.

ii) The Second Full Application for Housing

12.3 This application (PA 92/0212) was lodged with the planning office on 8th May 1992.[1] The description of the proposed development in the application was given as: "Revision to already approved layout by the provision of additional sites spread within the Village, parkland and woodland with already approved house types for each location and the introduction of suite apartment types P & Q in the parkland and woodland." The scheme was accompanied by a number of plans including, in particular, site plan number 16c.

12.4 A "covering letter" from Mr Spence dated 8th May (but received on 13th May) was sent to the Committee Secretary as an attachment to a letter to Mr Vannan.[2] This letter also dealt with two other applications, PA 91/4133, approval in principle for the golf course (which was under a review request) and PA 92/0130, the detailed application for the golf course. We return to these below. With respect to PA 92/0212, the case for the additional houses set out in Mr Spence's letter is related almost entirely to the Radisson connection and refers to "Radisson's requirements". The Commission has already looked at this in some detail in section 3 (paragraphs 3.79 to 3.86) where we have found that there was an intended agreement. We have also noted that this gave considerable force to the credibility of the Mount Murray proposals and it is not surprising that Mr Spence should have used that factor to place pressure on Messrs Bell and Vannan to extend the housing area.

12.5 Radisson's specific "requirements" were set out in a letter of 21st April 1992 from Mr Pearce, Senior Vice President, International Development, to Mr Spence wanting 40

[1] File A pages 109-112
[2] File A pages 115-120

or 50 "villas" to support the golf course. This is expressed in Mr Spence's covering letter as Radisson having updated their occupancy projection and asked for the building of a further 50 large villas on the golf course.[3] The letter then indicated that this has been turned down by officials. This is a reference to a meeting on 22nd April between Mr Spence, Mr J K McAvoy (Muir Associates Consulting Engineers) acting for the applicant and Mr Vannan, at which agreement on extra villas was not reached. Mr Spence, as a result, wrote to Mr Bell on 28th April 1992 protesting about Mr Vannan's intransigence and again threatening to withdraw the whole scheme. It is not clear whether any further meetings took place but Mr Spence stated in his covering letter to the application that the revised layout (plan 16c) went about half way to meeting Radisson's requirements. It was now stated that more villas than this would "detract from the sound planning principles which have governed all our thinking on this scheme and we believe enhance the previously approved development". (It should be noted that the Commission was unable to take any formal oral or written evidence from Mr McAvoy whom we understand resides in Dublin although contact was made with him in an attempt to do so).

12.6 There is no evidence to indicate that Mr Vannan prepared any kind of report prior to the Committee meeting for consideration of application PA 92/0212, nor that he sought to evaluate in any real way the reasons given for needing more houses. Mr Spence's reference to sound planning principles sits uncomfortably with the need set out in the site evaluation accompanying the outline application for a "more spread out layout" (around the golf course). Equally, just how another 25 or so units would enhance the development in this way was neither explained nor challenged, which it should have been in the light of the attachment to the letter of 20th March 1991 sent by Mr Spence to the Committee Secretary (see paragraph 3.39 above). This attachment set out the developer's architect's comments on the submitted layout and was the basis for the acceptance by the Committee of a greatly extended site area on review, and it placed emphasis on space and on rural settings.[4]

12.7 However, Mr Vannan does at least seem to have resisted the peremptory demand for another "40 to 50 villas" and went so far as to fax Mr Spence on 9th May 1992 to say that "the only possible solution for the location of the suites [apartment blocks] is for an extension to the hotel facilities complex." He also faxed a plan to show how this might be done. Nevertheless other meetings appear to have been held later because, on 15th May 1992, Mr McAvoy faxed a letter to Mr Vannan with a reduced scale copy of plan 16c indicating "the location of the proposed extra 18 suites which together with the agreed approved 7 extra suites equal the required 25 new sites".[5] There is no record of any sites being "approved" at that stage but permission was given to the original proposal on 29th May 1992 and a decision notice issued on 5th June 1992 subject to 15 conditions.

12.8 Condition number 4 indicates that the approval relates to "an additional 25 houses, site roads and drainage and associated landscaping".[6] It states (in the same way as did PA 91/0953 for the first 150 houses) "that specific location of each type must be agreed with the Architect and Planning Officer if it is proposed to build on any site a house from a category not approved for that site." However the plan (16c), whilst showing 18 extra units as referred to by Mr McAvoy, shows no apartment sites despite condition number 4 giving approval for "additional suite apartments type P and Q" in addition to the previously approved house type. As far as the Commission

[3] File A page 119
[4] File A pages 47-49
[5] File A page 121
[6] File A pages 132 & 133

can determine, this part of the condition does not relate to any plan submitted as part of the application, a situation symptomatic of the absence of proper procedures and control and almost certain to cause later confusion. The first plan which actually shows the range of house types for each plot is number D549(32)-02G dated October 1994 and there is no evidence which would confirm that this plan was ever formally submitted to and agreed by either Mr Vannan (on behalf of the Architect and Planning Officer) or the Planning Committee.

12.9 The other important feature of condition number 4 is that it specifically excluded from development "four sites marked in red on drawing number 16c received on the 18th May 1992 which are located in the south eastern part of the site in the vicinity of the Castletown Road. These may be relocated elsewhere within the area allowed for sites, and must form the subject of an amended plan to be submitted and agreed with the Architectural Planning Officer."

12.10 The Committee subsequently agreed to a review of the permission at the request of Mr and Mrs Reeves and Mrs H G Irving-Lewis. The Fire & Rescue Service of the Department of Home Affairs also asked for an appearance at the review hearing. The applicant later wrote to Mr Vannan on 16th September 1992[7] applying for approval to the design of apartment suite Q (as condition number 4 required) together with the location of one such block on the site, which was shown on plan 16F marked as received in the planning office on 17th September 1992.

12.11 The Commission have been at some pains to seek to clarify the status of plan 16F, as in addition to showing an apartment block, it showed a general rearrangement, mainly of the woodland and parkland areas of the site. The plan was received prior to the review. In evidence to the Commission (by letter dated 19th September 2002), Miss Corlett said that she would ordinarily have advised that the review decision did take this into account and approve this drawing in its decision. However, she also pointed out that this is not borne out by the notice. This notice is dated 6th November 1992 and says that "The Committee resolved to confirm its initial decision to approve the application subject to the conditions set out in the notice dated 5th June 1992".[8]

12.12 There is little doubt that plan 16c was submitted as part of the initial application for the 25 additional sites approved on 29th May 1992 and that no other plan was agreed as a replacement at review (including 16F). Had it been so, the review notice should certainly have referred to it. On the other hand, the decision notice equally makes no reference to plan 16c except insofar as is necessary to identify the four sites in the south east corner excluded from development. Whilst the failure by the planning office properly to relate the decision notices to submitted plans is, to say the least, regrettable, the Commission feel that, with the exception of the four sites in the south east corner, it would be unreasonable in the circumstances to maintain that the actual estate layout shown on plan 16F did not have planning permission. However, the Committee did not alter its decision on review in regard to the four dwellings in the south east corner of the site specifically identified for exclusion in condition number 4 and on plan 16c, and, importantly, neither this plan nor 16F grants planning approval for these four sites.

12.13 We refer below in sub-section (iv) to other plans later received in the planning office but these did not form part of any permission and did not provide a basis for the reinstatement of the four sites. Nevertheless from the Commission's site inspections on 16th July 2002 and on 24th April 2003 it was clear that dwellings either have been

[7] File A page 136
[8] PA 92/0212 File F18

built or are in the course of construction on all four sites. Miss Corlett for the Department of Local Government and the Environment confirmed that these developments derived from individual permissions given by the Planning Committee between 2000 and 2003. We refer to the circumstances relating to these permissions in sub-section (iv) below.

12.14 The Commission have drawn two main conclusions from the processing of PA 92/0212. The first is that Mr Vannan, Mr Watson and Mr Savage were all well aware of the implications of condition number 5 of the second initial decision notice issued on 4th October 1991. We consider also that the Committee itself had some understanding that their decision on 4th October might lead to some permanent housing, although Mr Vannan continued not to make that clear at the Committee meeting in May 1992, and to seek to mislead rather than to risk exposure of the irregularities in 1991. The result was the issue of a further permission for 25 sites controlled by the same condition, needlessly and unjustifiably compounding the flawed decision of October 1991. The second conclusion is that in accepting a further schematic plan (16c) as the basis for a detailed approval, without any overall link to the decision notice, officers effectively lost control of the proper implementation of the permission which was to lead to the later problems we identify below.

iii) <u>The Alterations to the Golf Course</u>

12.15 As we have noted earlier in paragraph 3.76, initial approval was given to a golf course as part of the Mount Murray complex on 8th April 1992 (PA 91/4133). This was conditioned approval for an 18 hole course. A review of this decision was requested by both the Road and Drainage Sections of the then Department of Highways, Ports and Properties, mainly on grounds of inadequate detail. In the meantime the applicant had prepared a detailed application, PA 92/0130, for the golf course which was sufficient for the Department of Highways, Ports and Properties and others to withdraw their review request.[9] The application was approved on 22nd May 1992 on the same agenda as PA 92/0212 which we have examined above.

12.16 At some point thereafter the applicant sought to revise the relationship between the golf course and the hotel and submitted three further planning applications to that end. These were: PA 92/0584 - relocation of driving range, tennis courts, bowling green; PA 92/0585 - extension to the golf course; PA 92/0586 - relocation of maintenance building and gas tank. The applications were interlinked in that the changes under PA 92/0584 involved the use of land north of Back Mount Murray Road (the C21) formerly allocated for the golf course which, as a consequence, required an extension to the golf course under PA 92/0585 south of the road.

12.17 Prior to the actual submission of PA 92/0585 Mr and Mrs Reeves, whose property was adjacent to the southern edge of the golf course as proposed under that application, wrote to Mr Vannan on 27th July 1992[10] drawing attention to the removal of sod banks, trees and other landscaping work on land which did not yet have the benefit of planning approval. The Committee Secretary, Mr Killip, replied on 28th July 1992 [11] and again on 10th August 1992[12] after the Enforcement Officer, Mr S E Olsen, had inspected the site. There was no acknowledgement in either letter that the

[9] PA 92/0130 F43 Letter from DHPP to Department of Local Government and the Environment 10.6.1992
[10] Mr & Mrs Reeves Q29 page 22
[11] Mr & Mrs Reeves Q29 pages 21 & 22
[12] Mr & Mrs Reeves Q29 page 24

activity taking place was unauthorised development and Mr and Mrs Reeves wrote again on 14th August 1992[13] directly to Mr Olsen raising three points: premature development; removal of hedges; and premature development of parts of the golf course maintenance building.

12.18 Mr Killip replied again on 19th August 1992[14] saying that he believed that Mr Olsen had not detected any premature development of an extension to the proposed golf course. He based his reply on grounds that removal of hedges was not contrary to the Town and Country Planning Act. He also explained that a concrete base which was being constructed was a pad for a compound which had been approved under an earlier application.

12.19 On this last point, the Commission has no reason to query the explanation given and the matter does not appear to have been raised again by Mr and Mrs Reeves. However, on the issue of premature development, the evidence given by Mr Olsen to the Commission is in some contrast to his views at the time, as identified above. When asked by the Commission about his involvement he replied that he was asked to inspect the site and see what was happening and that it was determined that the development of the extension of the golf course was taking place without planning approval. On the complaint about hedge removal, he told us that he believed that it was determined that the removal of hedges was not considered to be development of the land.[15] In the Commission's view, it should not have been a particularly difficult matter to determine whether unauthorised development was taking place as Mr Olsen, based on his site inspection, ultimately concluded. We find his evidence to us on this point to have been accurate but we also accept that Mr Killip's letters to Mr and Mrs Reeves in 1992 reflected the position as he understood it from Mr Olsen at that time.

12.20 PA 92/0585 was approved on 28th August 1992 and Mr and Mrs Reeves appear to have been granted a review. They also approached Mr Kissack, the then Chief Secretary, on various matters including premature development, who in turn asked Mr Savage, the Chief Executive of the Department of Local Government and the Environment, for comment. In his response dated 21st January 1993, Mr Savage agreed that the developer did indeed "jump the gun" as far as the extension to the golf course was concerned, and was asked to submit an application which it had done (PA 92/0585).

12.21 Mr Kissack wrote again to Mr and Mrs Reeves on 10th March 1993[16] after further internal communication apparently with Mr Watson as well as Mr Savage. In this, he states that the "premature commencement of the work on the golf course extension, was noted by the Architect and Planning Officer only when the work was well advanced" which seems surprising given that Mr and Mrs Reeves had alerted Mr Vannan over seven months earlier. Mr Kissack went on to refer to the position of the department as relayed to him which was that "there was no point in issuing a stop notice in view of the advanced nature of the work and ... in any case a short period of work with a bulldozer would restore the field to agriculture in the event of a planning refusal."

12.22 In the Commission's view, the irregularities associated with the evolution of the golf course are not a matter of overriding concern in relation to the much more serious

[13] Mr & Mrs Reeves Q29 page 23
[14] Mr & Mrs Reeves Q29 pages 25 & 26
[15] Evidence of Mr Olsen Q43 Transcript Day 23 pages 11 and 13
[16] Mr & Mrs Reeves Document Q29 pages 35-37

issue of housing occupancy. We are also aware that later negotiations have ensured a reasonable separation between the fairways and the domestic boundaries of Mr and Mrs Reeves, reinforced by intervening planting. Nevertheless, the claims of Mr and Mrs Reeves (albeit in relation not just to the golf course) that the developer received special treatment have some justification. Mr Kissack, in his letter to them of 10th March 1993, explains this on the basis that "Planning Officers like all Government Officials are encouraged to be helpful". He referred to the complex nature of the Radcon development and argued that the Committee would be "legitimately criticised" if they adopted a "bureaucratic and unhelpful posture which is strictly within the planning legislation but which obstructs the development".[17] It seems to the Commission that not acting when unauthorised development is pointed out either because a scheme is complex or because there is a risk of being seen as bureaucratic is being rather more than "helpful", and by starting to extend the golf course into areas for which they had no permission, the applicants simply flouted proper planning procedures. For the officials to say there is no point in issuing a stop notice when work is advanced, even if restoration would allegedly have been straight forward, seems to us to be a weak policy which encourages developers to do as they please and reduces public confidence in planning procedures. Whether in overall terms the applicant received special treatment at Mount Murray is something we consider later in our conclusions.

iv) <u>Alterations to the 1991 and 1992 Housing Permissions</u>

12.23 The position which had been reached by the end of October 1992 was that two approvals, under PA 91/0953 (150 houses) and PA 92/0212 (an additional 25 houses) respectively, had been given which permitted both permanent occupation and holiday letting. Construction of houses does not appear to have commenced until sometime in or after 1994[18] but, as we have noted earlier, both permissions gave considerable flexibility to the developer in that it was only required to seek any additional approval, and that only of the Architect and Planning Officer, not the Committee, when it was proposed to build a house from a category not approved for that site. In other words, the developer could build any house within the range of types for that site and could locate that dwelling anywhere on the plot without further approvals other than those under the building regulations.

12.24 Professor Crow records in his report that a number of amendments had been submitted and accepted over the years on an informal basis,[19] to the extent that the status of many plans was by no means clear. That in turn prompted his selective examination of three sample properties and the revelation in connection with Murrays Lake Grove that the Department could not trace a plan approving the construction of this cul-de-sac of four houses at all.[20]

12.25 The Commission has been concerned to look into this position, not simply to understand how the development of the estate actually proceeded, but also because the construction of Murrays Lake Grove was to have implications for certain residents located nearby. To do this we have looked at the plans on the files for PA 91/0953 and PA 92/0212 and have sought clarification from the planning office as to those regarded as being approved. This work was carried out by Miss Corlett and Mr Sinden and served to confirm an earlier examination carried out by Miss Corlett and

[17] Mr & Mrs Reeves Document Q29 page 37
[18] Paragraph 3.89 – 3.91 above
[19] Document C6 Crow Report paragraph 4.4
[20] Document C6 Crow Report paragraph 4.8

identified in a memorandum[21] to the Director of Planning (Mr Vannan) on 24th November 1999. Most importantly, this memorandum, to which she received no reply, indicated concern that "the drawing which prospective purchasers are being given by the vendor does not correspond with the approved drawings. There is a significant difference between the approved layout shown in drawing reference 16A (PA 91/0953) and that shown in the customer's drawing reference D540(32)-02G". (This is the drawing which we referred to earlier in paragraph 12.8 and it refers only to the Braddan part of the site.) That such a chaotic situation had been allowed to develop and persist reflects very badly on the quality of the senior planning staff in 1991 and 1992 but is hardly surprising given the almost non-existent link between planning permission and the plans to which they were supposed to relate. Miss Corlett's concern in her memorandum that "we are not in a position to properly advise prospective purchasers of the present planning position" was, in the Commission's view, entirely justified.

12.26 The Commission has already made clear (in paragraph 12.12) that we regard the layout in plan 16F submitted before the review decision on PA 92/0212, as having planning permission except for the four properties identified in condition number 4. This is not inconsistent with Miss Corlett's memorandum which indicates that this plan "may have been approved at review". The point of concern is how matters proceeded from this plan to D540(32)-02G, to which we have referred in the previous paragraph.

12.27 Miss Corlett in a letter to the Commission dated 30th July 2002 indicated that this plan was submitted to Mr Vannan by Mr Spence on behalf of Mount Murray Country Club with an accompanying letter received in the planning office on 28th February 1996.[22] In addition to further sites for apartments, Miss Corlett stated that the plan "showed a complete rearrangement of the roads and plots, reinstatement of the four plots specifically rejected in the initial notice for PA 92/0212, all houses now detached with garages, some of the houses on the boundaries of the plots and some house type footprints different from that previously shown in 16c". In the same letter, Miss Corlett refers to "a further drawing reference D549(32)-04J which shows all of the site and is the only drawing which shows the four plots now known as Murrays Lake Grove."

12.28 The Commission requested the view of Mr Willers on behalf of the developer concerning his understanding of the relevant plans. In a letter to the Commission dated 11th October 2002[23] he stated that "the plans that are relied upon are those in respect of which Fairport Limited constructed the road layout. I believe the relevant drawing number is D549(32)-04 and it is a Muir Associates' drawing." This is not precisely that referred to by Miss Corlett but there are no plans on file PA 92/0212 other than with the suffix J and bearing in mind that Mr Willers is not able to be absolutely certain about the number, the Commission have taken it to be the same. Importantly, Mr Willers went on to say with regard to the process of development that "Plainly, there was a degree of informality about depositing drawings and obtaining approval to them. Given the open nature of condition number 4 in both of the residential consents, it seems to be plain that all parties accepted that the Planning Officers had power to and did agree to the final layout as constructed and subsequently developed."

[21] Miss Corlett Q13 letter 30.7.2002 with memorandum 24.11.99 attached
[22] Miss Corlett Q13 Attachment to letter 30.7.2002
[23] Mr P Willers letter 11.10.2002 point 1

12.29 We have no reason to doubt that the process followed was informal and we do not dissent from Mr Willers' opinion as to the nature of condition number 4 which we have just set out. There must, however, be very considerable doubt about Mr Vannan's powers to agree to certain changes without the approval of the Planning Committee. In particular, the Commission believes that he had no powers whatsoever to reinstate the four sites referred to in condition number 4 of PA 92/0212, without specific Committee approval. It is difficult to see how the developer would have been unaware of that, given the wording of the condition.

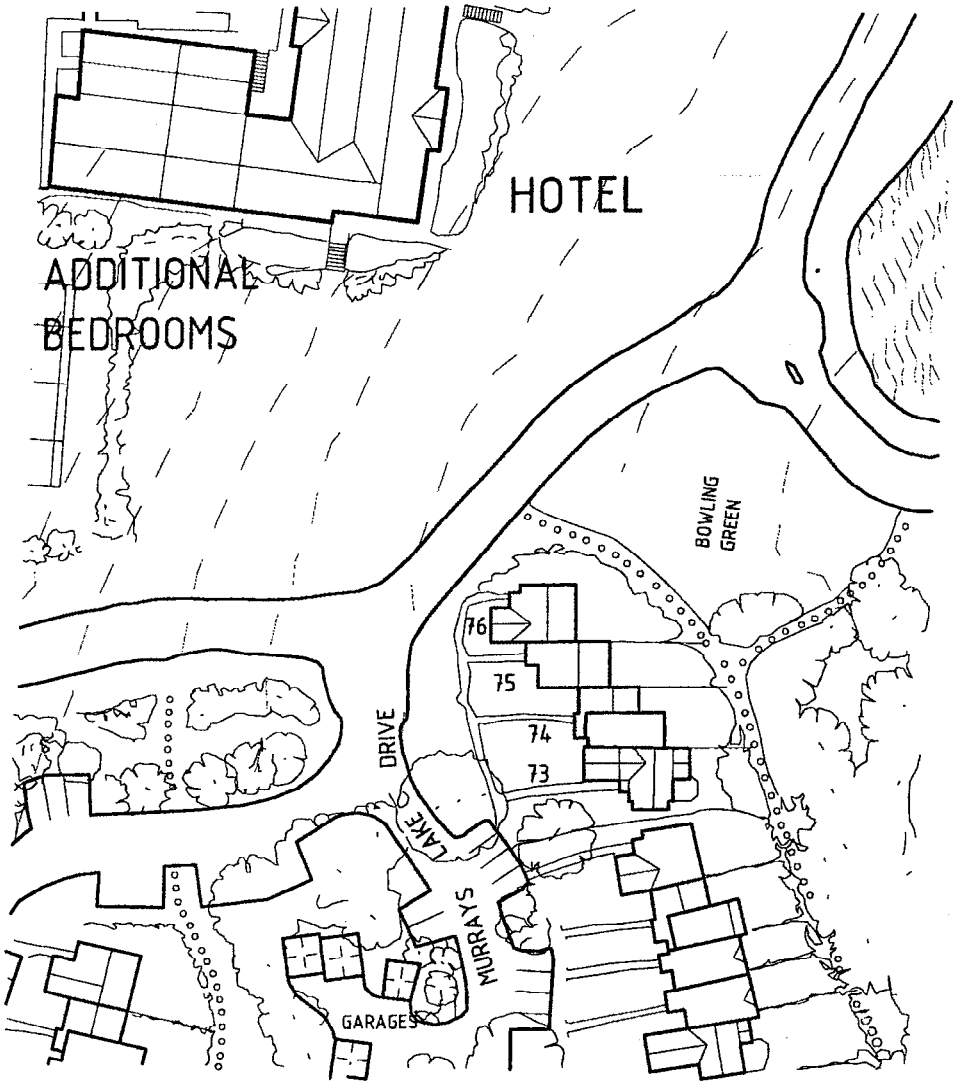
12.30 Considering now the developments on Murrays Lake Grove in the light of all the above, these were shown neither on plan 16A (the site plan for PA 91/0953) nor on plans 16c or 16F (the two site plans for PA 92/0212). Mr Willers in his statement[24] to the Commission claimed that "it seems fairly obvious to me that these four houses (marked in red on drawing number 16c) are the four houses in Murrays Lake Grove." He also maintained in evidence that "it's wrong to say that they don't have planning permission. They have planning permission in numerical terms and they have planning permission on plans which have been marked on and operated." The Commission disagree. The overall numerical approvals (for 175 houses) do not convey any specific approval for Murrays Lake Grove as this did not form part of the accompanying plans. There is no evidence as we have seen in paragraph 12.8 above that plan no D549(32)-02G was ever submitted to the planning office. Equally there is no evidence of submission or approval of the plan referred to by Mr Willers, D549(32)-04. We feel certain that, had an approval existed for either plan, Mr Willers would have provided a copy.

12.31 In point of fact Miss Corlett in her letter to the Commission of 30th July 2002 stated that it was clear that the four plots on Murrays Lake Grove were not additional plots but simply a realignment of the original plots 73 to 76 on Murrays Lake Drive. This was subsequently drawn to the attention of Mr Willers in a letter sent to him by the Commission on 7th October 2002 and was not commented on. The Commission accepts Miss Corlett's explanation as to the origin of Murrays Lake Grove although this was a change which would nevertheless have required planning permission and was not an alteration which Mr Vannan could or should have agreed to informally. Mr Willers said in evidence that the approved plan would be in the Planning Department and if it was not, it was because they have lost it.[25] However, Mr Willers was unable to provide the Commission with a copy of any application or submitted plan regarding the Murrays Lake Grove plots, and whilst we are aware of the confusion over plans at that time in the planning office, we consider it highly unlikely that experienced developers would mislay important approved plans and we regard it as much more probable that no permission was ever applied for rather than its having been mislaid. Figures 1a and 1b illustrate the changes relating to Murray's Lake Grove.

12.32 We have considered one other discrepancy in terms of plans. Plan D549(32)-04J, in addition to showing Murrays Lake Grove, also shows two further sites in the south east corner (not those referred to in condition number 4 of PA 92/0212) marked as plots 134 and 135. Mr Willers was asked what his records show for these plots and he indicated that "the plans we have been working to...have these two plots marked thereon." He further indicated that plot 134 has an express planning permission which Miss Corlett confirmed to the Commission.[26] However, Miss Corlett also told us that she could find no approval for the adjacent plot, reference 135, and as this

[24] Mr P Willers Document Q2 page 30
[25] Evidence of Mr P Willers Q2 Transcript Day 7 page 54
[26] Miss Corlett Q13 letter 18.11.2002

Fig 1a
Extract from Plan 16c
May 1992



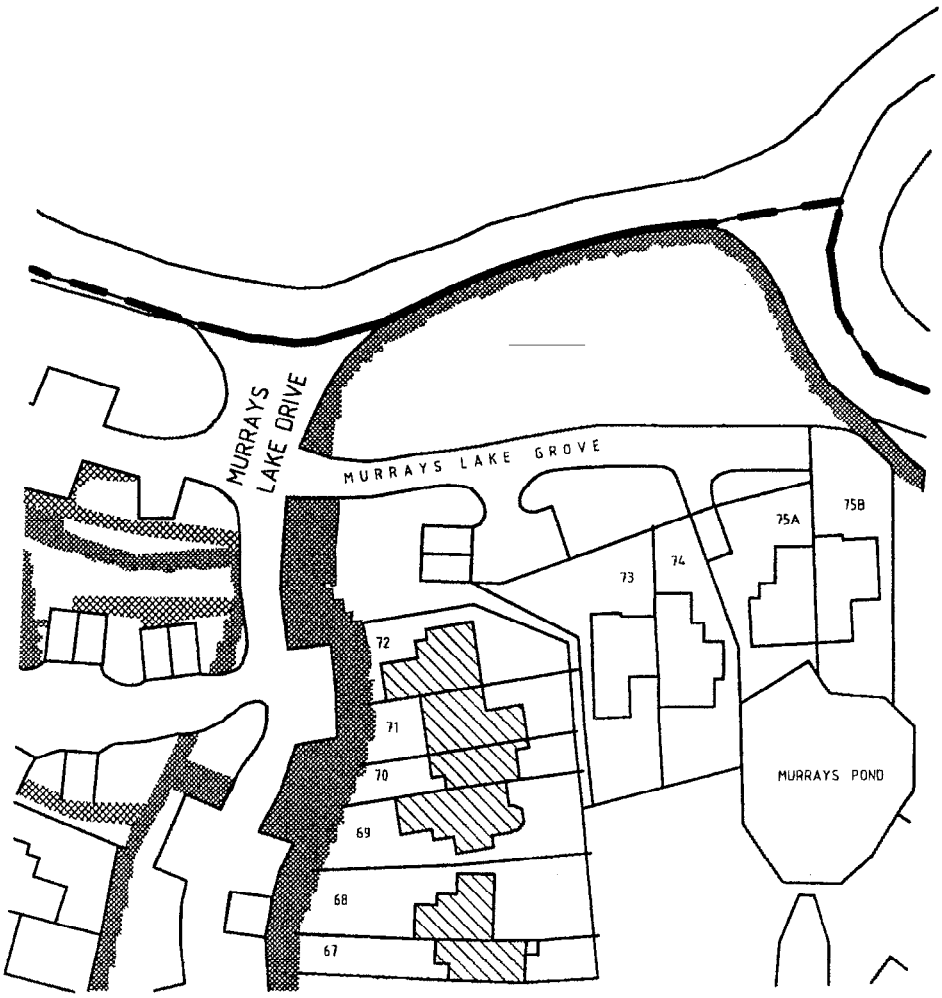


Fig 1b
Extract from Plan
D549(32)-04J

Original plots 73-76 Murrays Lake Drive (Plan 1a) relocated as plots 73,74,75A and 75B on Murrays Lake Grove (Plan 1b)

Fig 2a
Extract from Plan 16c
May 1992
Plots referred to in Condition 4 of PA 92/0212 now numbered on the estate as 131, 132, 133 & 136

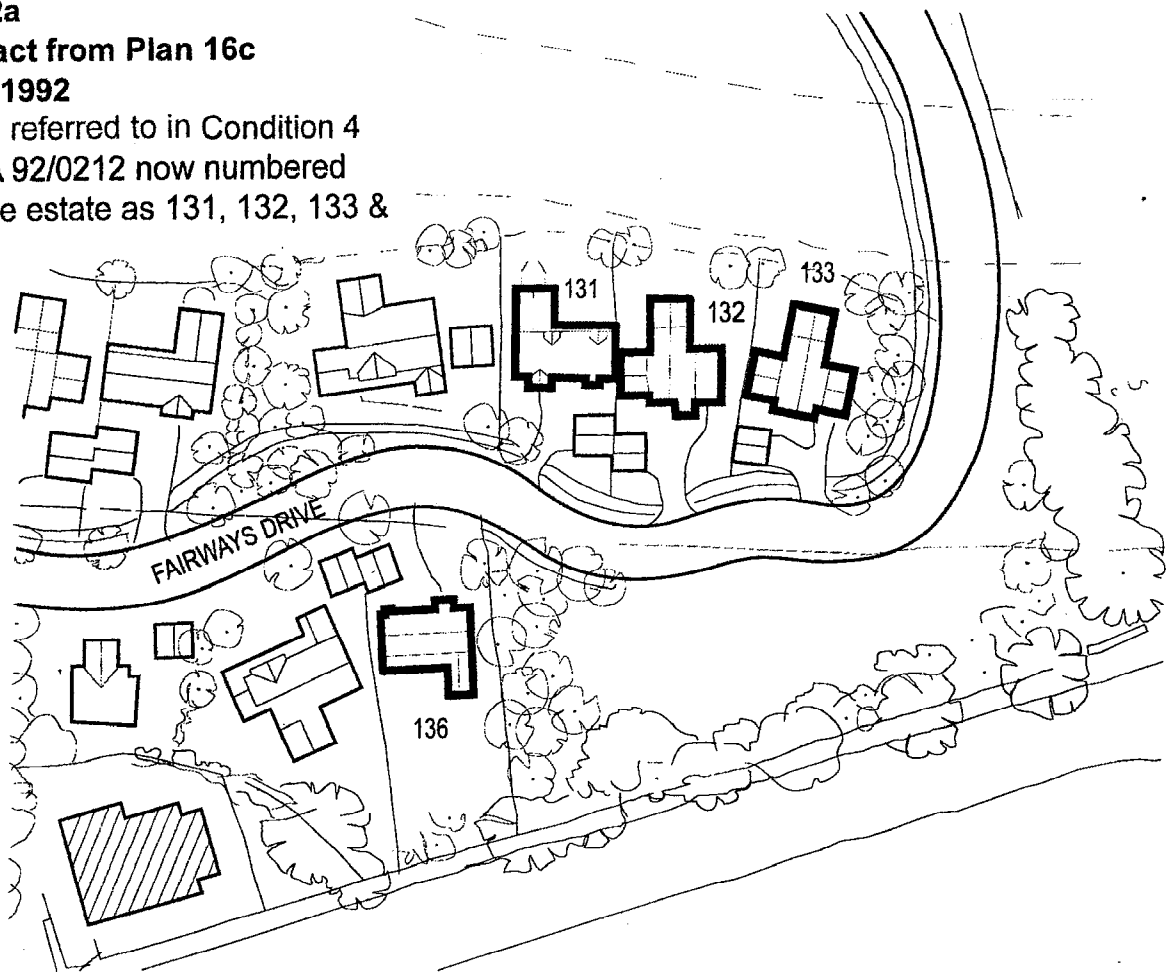
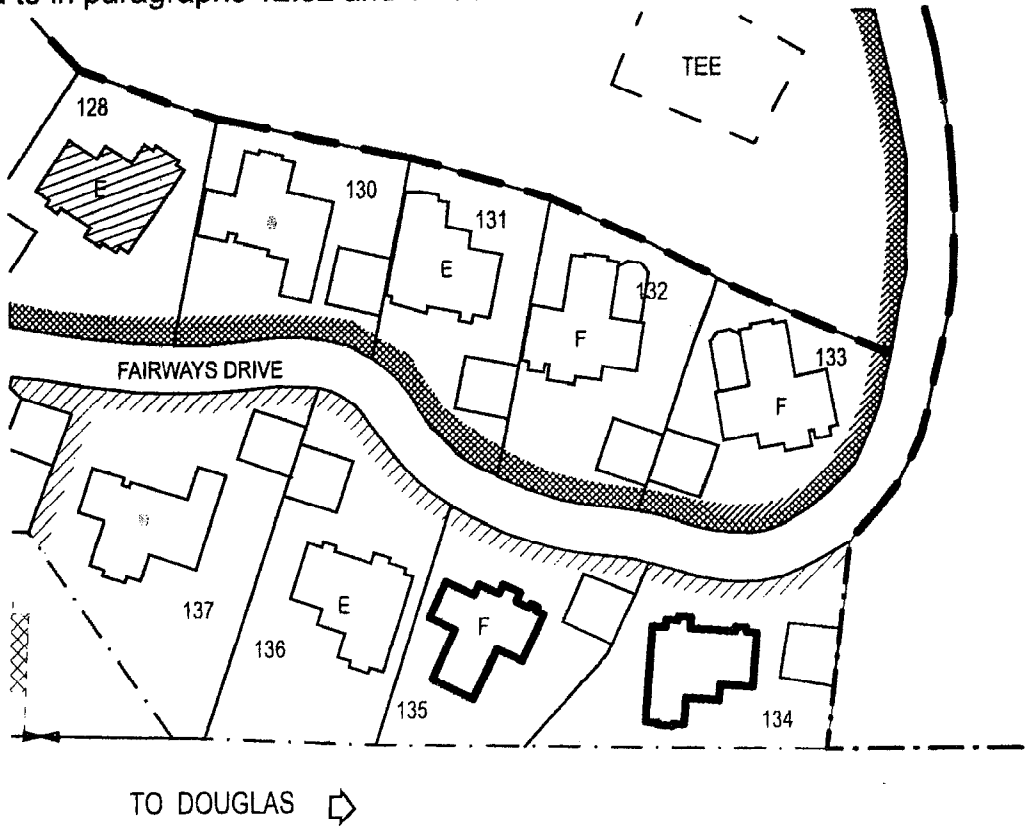


Fig 2b
Extract from Plan D549(32)-04J
Location of plots 135 & 135 as referred to in paragraphs 12.32 and 12.33



plot was not included in either of the plans approved under PA 92/0212, she could only conclude that this house has no legitimate planning approval. We agree with Miss Corlett's reasoning notwithstanding the open nature of condition number 4 and the resulting informality of procedures. There is no documentary evidence of approval.

12.33 We further conclude that a number of changes were made to the layout and extent of the Mount Murray estate during the course of development which departed significantly from that shown on the plans accompanying the main approvals. Those plans (16A, 16c and 16F) were, in the Commission's view, wholly unsatisfactory to secure proper standards of amenity, whilst there is no record of the plans produced later, and to which the developer worked, ever having been accepted and approved or even given informal approval by Mr Vannan. In practice, the Commission consider that the imprecise nature of condition number 4 did indeed lead to informal procedures, as Mr Willers pointed out, but that does not make the absence of records acceptable. The present position is that the dwellings built or under construction on plot number 131, 132, 133 and 136 Fairways Drive have the benefit of specific permissions given by the Planning committee between July 2000 and April 2003. These were legitimate decisions for the Committee to take as it has chosen to do. The Commission's concern is that the plots are described in the officer's reports as "undeveloped" (132 and 133) or "existing" (131) and reference is made either to the dwellings being similar to those originally approved (under PA 91/0953 and PA 92/0212), or to earlier drawings 16c and D540(32)-G. This is misleading. Neither the approvals nor plans referred to confer any former approval and whilst that does not prevent the Committee giving later approvals as it has done, the basis on which those decisions were made does not reflect the fact that up to July 2000 the four plots referred to in condition number 4 of 92/0212 had not been reinstated. Figures 2a and 2b illustrate these matters at Fairways Drive referred to in this paragraph and in paragraph 12.32.

v) <u>The Concerns of Individuals at Mount Murray</u>

12.34 In section 3 (paragraph 3.91 seq), we touched on the particular concerns raised by Mr Vakil, the owner of 70 Murrays Lake Drive, who gave evidence to the Commission. We consider here the substance of those concerns which centre primarily on the effect of Murrays Lake Grove on the amenity of Mr and Mrs Vakil, and on changes made to the character of the estate subsequent to Mr Vakil's purchase. We include in this the evidence of Mr D Cox of 72 Murrays Lake Drive who did not give oral evidence but submitted a statement and whose concerns are similar to that of Mr Vakil.

12.35 We have concluded above in sub-section (iv) that the four properties now forming Murrays Lake Grove were formed by the realignment of the northern end of Murrays Lake Drive placing them immediately behind and at right angles to numbers 70, 71 and 72 Murrays Lake Drive. Plans 16c and 16F both show a small irregular terrace at the end of this road (nearest the hotel), the latter plan marking them as plot numbers 73 to 76. It is these that have been relocated and numbered as 73, 74 and 75A and B. We have also, like Professor Crow, for the reasons indicated in sub-section (iv), concluded that these dwellings were built without the benefit of planning permission.

12.36 Mr Vakil purchased his property in November 1996 and Mr Cox in February 1998. The essence of their concern is that in each case, the search of the planning register

prior to purchase showed no approvals other than PA 91/0953 and PA 92/0212.[27] The concern of Mr Vakil was that a search of the planning register would have or should have shown purchasers on Murrays Lake Grove that there was no approvals for these houses[28] and advice should have been given accordingly, a view which was consistent with the copy of Mr Cox's search provided to the Commission.[29] However apart from approvals for the hotel and associated works, such search showed only the outline approval PA 90/1842 of 12th March 1991 and the two main housing approvals PA 91/0983 and PA 92/0212 neither of which included Murrays Lake Grove. Neither Mr Vakil nor Mr Cox indicated when development of the four properties in Murrays Lake Grove began, but we accept that this was some time after this part of the estate was sold to J G Kelly Homes Limited by the original developer in June 1998. They both visited the planning office which was unable to provide any approved plan to demonstrate the legality of the four dwellings. We should say at this point that the handling by the planning office of what would obviously have been urgent enquiries appears, on the evidence, to have been inadequate and unhelpful.[30] In addition, we have seen no evidence that, having been alerted to development taking place apparently without planning permission, the planning office took any steps to investigate the position from its own point of view, let alone those of Mr Vakil and Mr Cox.

12.37 We have been unable to ascertain precisely when the roadway for Murrays Lake Grove itself was laid out, but there is good evidence relating to when the proposal to do so was known, and by when it had actually been laid out. Mr Vakil purchased in November 1996 one of nine show houses built in the Village area and Mrs Palmer who worked in the sales office in April 1996 (paragraph 3.90) indicated in evidence in answer to a question as to whether the road foundation was down at the time of her employment that she could not be sure but she did not think that it was.[31] Mr Jackson of J G Kelly Homes Limited indicated in his statement to the Commission that the road and services had been installed prior to his company's purchase (June 1998) and that he believed planning permission existed for the houses to be built.[32] In an attachment to his statement in the form of a letter from Gough & Co, Advocates, dated 10th April 2001 to Mr Sinden, it is said that the road had been laid for Murrays Lake Grove before any sales in the Village area, whether by Mount Murray Country Club Limited or their client.[33]

12.38 More particularly Gough & Co drew attention to the fact that the plan annexed to the conveyance of 70 Murrays Lake Drive set out the layout of Murrays Lake Grove at the rear. Gough & Co also point out in their letter of 10th April 2001 that the road is shown on a building regulation plan approved in May 1995[34] although this does not convey any planning approval. Mr Vakil himself in evidence acknowledged his conveyance plan and the sales office site plan did show Murrays Lake Grove[35] although we now know that the latter was not an approved plan.

12.39 Returning to the sequence of events, the concerned residents led, at that point, by Mr C Harrison, who lived in Murrays Lake Drive, approached Mr Gelling, the MHK for the

[27] Mr & Mrs Vakil Document Q28
[28] Evidence of Mr Vakil Q28 Transcript Day 14 pages 33 & 34
[29] Mr & Mrs Cox Document WS5 Appendix E1
[30] Mr & Mrs Vakil Document Q28 page 2
[31] Evidence of Mrs Palmer Q45 Transcript Day 21 page 64
[32] Mr J Jackson Document Q7 page 3
[33] Mr J Jackson Document Q7 attachment
[34] Mr J Jackson Document Q7 attachment
[35] Evidence of Mr Vakil Q28 Transcript Day 14 page 10

area and the then Chief Minister. Two meetings were held. Mr Gelling subsequently had unproductive correspondence with the planning office and found it necessary to write to the then minister, Mr Gilbey, for clarification on 9th July 1999.[36] The minister was unable to answer the queries raised and Mr Gelling is quoted by Mr Vakil as saying at the last meeting of the residents that "he would be taking legal advice on the mainland and will put a motion in Tynwald for a Judicial Inquiry."[37] Mr Gelling clarified this in evidence as referring to the Crow Inquiry which took place shortly afterwards.[38]

12.40 Professor Crow in his report was to conclude that "in its over-informal manner of dealing with amendments to the planning approvals at Mount Murray, DOLGE may well have deprived some householders of the right of objection to changes affecting them. In my view, the department should consider its position on this matter, and be willing to offer an apology to those who submit legitimate claims and make an offer of compensation in deserving cases of justified complaint." The department have elected subsequently to do neither. Mr Hamilton, the Chief Executive of the department, justified this in a letter to Mr and Mrs Vakil of 4th October 2001 drawing attention to the duty of buyers and their professional advisers to satisfy themselves as to the location of the plot, the existence of the requisite planning approvals and the layout and location of other properties in the vicinity of the plot and also pointing out, as he saw it, the likelihood that buyers of properties in or about Murrays Lake Grove were aware, or could or should have been aware, that Murrays Lake Grove was to be constructed where it has been constructed.[39]

12.41 That the government did not follow these recommendations of Professor Crow caused the residents to raise matters again, not just with Mr Gelling but also with the Chief Minister, Hon Mr R K Corkill MHK. Mr Vakil in his statement claims that, after a visit, Mr Corkill agreed that they were denied the right to object and would bring the case again to the Council of Ministers.[40] The letter he refers to in support of this position is not so specific but Mr Corkill told us that he did visit Mr Vakil and other householders about this matter but that he ceased the contact after the setting up of this Commission.[41]

12.42 The Commission are of the opinion that Mr Vakil and, to a lesser extent, Mr Cox, have some grounds to feel aggrieved. Their interests at the time were prejudiced by the fact that the planning office was unable to advise them with respect to the existence or otherwise of a planning permission on Murrays Lake Grove. Moreover, their enquiries were treated in a cursory manner bordering on indifference, as exemplified by the failure of the planning office to investigate how and why development which was notified to them as taking place apparently did not have planning permission.

12.43 However, as we have noted in paragraph 12.38, the plan annexed to Mr Vakil's conveyance of 70 Murrays Lake Drive included a layout of the four intended dwellings on Murrays Lake Grove. The road was also shown on other plans, and Mr Vakil himself accepted that both sales offices' plans and the brochure available when he purchased, also showed the road. None of these plans and documents were based on planning permissions as later became apparent, but Mr Vakil did not

[36] Mr Vakil Document Q28 Attachment C
[37] Mr Vakil Document Q28 page 2
[38] Evidence of Mr Gelling Q23 Transcript Day 21 page 15
[39] Mr Vakil Document Q28, Attachment F
[40] Mr Vakil Document Q28 page 3
[41] Evidence of Mr Corkill P7 Notes Day 4 page 21

dispute in evidence that he was aware at the time of purchase from the various sources above that development appeared to be anticipated to the rear of his property.

12.44 His greater concern was with the location, design and size of these properties which were not the same as on the brochure plan.[42] Had the houses been built as on the brochure, "there wouldn't have been a kitchen window and a door facing me: a blank wall would have been there."[43] The developer of the four dwellings, as with the rest of the Village area at that stage still unbuilt, was J G Kelly Homes Limited who, according to Mr Vakil, decided to change the original concept or design and configuration without applying to the planning authority and advertising this change.[44] However, the Commission are satisfied that J G Kelly Homes Limited had no reason to believe that planning permission did not exist and would have been aware that the original permissions (PA 91/0953 and 92/0212) allowed a variety of house types which could then be located anywhere in the plot. It is this factor, as much as the existence or otherwise of a specific planning permission, which led to changes in location and design which Mr Vakil objected to. We have referred to the highly unsatisfactory nature of such flexible conditions but they were a part of the permissions granted.

12.45 Having regard to all of the above, the Commission do not feel there are grounds to recommend to the Department of Local Government and the Environment that it reconsiders its earlier decision regarding the making of any compensation. It is nevertheless unquestionably the case that Mr Vakil and Mr Cox were treated very unhelpfully by the planning office at the time. Mr Vakil was unwise to rely on a brochure which had no planning status but the fact that, for whatever reason, development on Murrays Lake Grove was allowed to take place in the absence of any identifiable planning permission did in effect mean that Mr Vakil and his neighbours, whatever their strict legal position, were denied in practical terms a right of objection.

12.46 With regard to actual loss of amenity, which we considered on site visits, there is no doubt that the rear outlook from numbers 70 to 73 has been impaired. Mr Vakil in his statement also made reference to flooding and the loss of privacy. We are in no doubt as to the former, having had particular regard to the decision of the Rating Appeal Commissioners given in November 2001, directing that the gross rateable value of numbers 69, 70, 71 and 72 Murrays Lake Drive be reduced by 5% on the grounds of flooding severity. Our judgement on loss of privacy is that it is less severe than claimed, but that does not alter the fact that Mr Vakil's level of amenity is less than he might reasonably have expected had he had the opportunity to comment on what was to be built before it was constructed.

12.47 Mr Vakil's other concern and that of his neighbours was that the new developer, J G Kelly Homes Limited, as he put it, changed the shape, style and configurations of the properties. He claimed that this was not done with the correct approval and the changes were not advertised.[45] A particular concern was fencing in respect of which Mount Murray Homes Limited had said that the front of all houses were open plan and that the rear of the houses should be as per the Buyer's Guide with only a two foot picket hewn fence being allowed.[46]

[42] Evidence of Mr Vakil Q28 Transcript Day 14 pages 15 & 16
[43] Evidence of Mr Vakil Q28 Transcript Day 14 page 16
[44] Mr Vakil Document Q28 page 2
[45] Mr Vakil Document Q28 page 2
[46] Mr Vakil Document Q28 page 2

12.48 Those qualities were what appealed to Mr Vakil and others and the change brought about by J G Kelly Homes Limited, he said, had largely negated part of the reason for purchase. However, as we have seen, the developer built in accordance with the planning permission and the principles of the Buyer's Guide, so far as they are identifiable, were only incorporated into the decision notices for PA 91/0953 and PA 92/0212 in respect of occupancy of housing and not in terms of design and layout. At the same time, detailed conditions were imposed giving the planning office control over external finishes and the design of external doors and windows but not on communal matters such as fencing. Regrettably, therefore, the planning office did not see fit to introduce a condition or conditions which would have ensured the concept was followed through.

12.49 The Commission agrees with Mr Vakil that the estate does not display consistent use of "hewn" fencing as referred to in the Buyer's Guide. However, the implication of the absence of control over estate-wide design features such as this, as part of the conditions imposed on the two main permissions, is that there was no obligation on J G Kelly Homes Limited (nor for that matter on Mount Murray Country Club) to seek approval from the planning authority to depart from the type of detail design treatment originally envisaged. A variety of fence types has now been introduced as we saw on our site visit. That might be thought to be less agreeable than the original concept but does not mean that J G Kelly Homes Limited have been acting without regard to planning law and statute.

12.50 The original planning approvals do of course provide some control over house types at condition number 4 and require approval of the Architect and Planning Officer where it was intended to build a type not approved for that plot. Mr Vakil referred in his statement to one such instance where a one bedroom house became a four bedroom house which the Commission again confirmed during its site visits. We have sought assistance from the planning office but we have no evidence on this particular case however as to whether or not it was authorised by a specific planning permission. Visually it does not appear as any particular problem.

12.51 Our conclusion on this point therefore is that whilst we are sympathetic to Mr Vakil's concerns about estate design, the way in which variations from the original concept have been achieved have not contravened the conditions under which those approvals were issued.

vi) <u>The Emergence of Infrastructure Problems and the Loss of Trees</u>

12.52 In section 3 we have noted the considerable lapse of time which occurred between the approval of the second main housing application, PA 92/0212, and the actual construction of units on any significant scale. Mr and Mrs Vakil, who purchased in November 1996, recalled twenty four show houses at that time in the Village and around the golf course. This is also consistent with the evidence of Mrs Palmer and Mrs Gough who worked in the sales office in mid-1996 for the Mount Murray Country Club.

12.53 Shortcomings in the infrastructure of the estate to which we refer in section 13 did not manifest themselves until some five to six years after the granting of the main permissions. They can be traced almost wholly to the fact that design and development were permitted on the widely understood but false basis that all housing units were related to the overall tourism concept. The developer was therefore able to lay out and build to standards significantly inferior to those which a permanent residential estate would have required, and as the estate was private, the normal

involvement by government departments in ensuring proper standards did not occur. How far this was a pre-planned strategy on the part of the developer we are unable to say. It is acknowledged that there was an intent throughout to secure permanent residential use as part of the permission but those representing the applicant and the developer, Mr Willers and Mr Gubay, declined to answer questions as to when, and for what reason, it was determined that all units would be occupied on a permanent residential basis. As experienced developers, however, it would have been perfectly obvious to them that the estate's design was incompatible with the form of occupancy. It does not seem to have been a matter which gave them any undue concern.

12.54 The infrastructure deficiencies which we have identified are road and parking standards, fire service access, pedestrian links to the A5, sewerage and drainage, and access to other community facilities such as schools, shops and post offices. We look at these matters in more detail in section 13. The majority were referred to in Professor Crow's report although it may be noted here that we do not share all of the conclusions to which he came. We also look later, in section 15, at the action which the government has taken to try and remedy at least some of the residual problems.

12.55 A concern of a very different but equally harmful kind has been the loss of trees, particularly within the woodland part of the site. Ironically, it was the publicly visible tree loss which was to lead to serious questions being raised about the nature of the approvals. Mr Gelling, formerly MHK for the area, talked in evidence of the many complaints he received both from on the site and elsewhere about trees coming down. He referred particularly to the occasion when a large mature tree came down across the main Castletown to Douglas Road which, he said, alerted a lot of people.[47] We also heard evidence from Mr P Williamson, Senior Forester with the Department of Agriculture, Fisheries and Forestry to the effect that in about 1999-2000 "Trees were being felled all over the place."[48]

12.56 In the case of both PA91/0953 and PA 92/0212, the department imposed standard condition number 9 which stated that "no trees may be felled without the prior permission of the Department of Agriculture, Fisheries and Forestry and the Planning Committee."[49] That intent was wholly undermined, however, by the nature of condition number 4 on both approvals which not only allowed a variety of house types within each site but allowed the location of a dwelling within a site to be a matter for the developer to determine.

12.57 At the same time the approved plans 16A, 16c and 16F were schematic and did not relate the location of houses to the position of the trees in other than the vaguest way despite the fact that the applicant had carried out fully detailed tree surveys as part of the preparation of the outline application in January 1991. The position was clearly put by Miss Corlett in correspondence with Mr Williamson in July 2000 when she stated "that the plans which formed the basis of the approvals which were granted in 1991 and 1992 were not accurately drawn, nor were they at a scale at which decisions could be made to save or protect individual trees which existed on the site."[50]

[47] Evidence of Mr Gelling Q23 Transcript Day 21 page 5
[48] Evidence of Mr Williamson Q31 Transcript Day 18 page 3
[49] File A pages 108 and 134
[50] File C pages 243 and 244

12.58 To try to understand better why this came about, the Commission asked Mr Cretney, the Committee chairman at the time of the original approvals, why it was that his Committee was prepared to approve a layout plan which did not make the consequences clear in terms of possible tree loss. In response he stated that "I can only think that it was on the basis of what we were advised."[51] Mr Vannan was questioned on this in some detail but finally had to say that he could not explain why he did not ensure that proper steps were taken to protect the best trees.[52] He also agreed, as we have seen in section 11, that condition number 4, first imposed in September 1991 and relating to a number of approved house types on sites, meant in effect that the planning office did not control the location of a house within its site. The implications of that for the woodland part of the site in particular must have been obvious. Mr Williamson described the trees as "a fairly typical woodland block" and said that "had the choice been to build here or build elsewhere then we would have said yes, build elsewhere."[53] It is clear to the Commission from this that any residential development in such circumstances could only have been achieved with sensible and detailed planning. No such planning was exercised.

12.59 One other point needs to be made about the failure to protect trees. The applicant had explained that condition number 4 was sought in order to give flexibility (see paragraph 3.65 above). However the outline application approved on review in April 1991 (PA 90/1842) did include, at condition number 9, a requirement for a scheme of landscaping to be prepared with, amongst other things, an indication of the trees to be retained. It is a standard condition widely used in the United Kingdom which, for whatever reasons, was never enforced. Had it been so, the quite unnecessary loss of trees would have been avoided. It might also have been averted if there had been any kind of effective consultation procedure in place in 1991. Mr Vannan told us that the "Departments of Forestry" were asked for advice and were consulted.[54] If he is correct, any such advice, and the information from the tree survey were not followed through into the permissions. Mr Williamson, Forester since 1980, on the other hand said that his department had not been involved in the planning process and that their first involvement was in the late 1990s.[55] Given that the absence of relevant documentation supports Mr Williamson, we prefer his account. And so we find that, despite the importance of the trees to the site, Mr Williamson's department was not involved at any stage in the planning process, and this is something which we find disturbing.

12.60 The implications of the above for subsequent control of tree loss have been significant. Mr Williamson in a part of the correspondence with Miss Corlett referred to above, pointed to advice from the Attorney General to the effect that "where a tree physically obstructed the implementation of an approved plan, such approval was, in effect, a felling licence and duplication by the Forestry Division of the Department of Agriculture, Fisheries and Forestry was inappropriate."[56] When allied at Mount Murray to the ability of purchasers of a plot to build anywhere on that plot, then significant tree loss was inevitable. Miss Corlett's approach to the present situation "is to accept that Planning Permission has been granted for the erection of dwellings on the plot layout and try to minimise the amount of trees to be lost on this basis. I feel this is the only reasonable stance to take under the circumstances." [57] Mr

[51] Evidence of Mr Cretney Q22 Transcript Day 17 page 42
[52] Evidence of Mr Vannan Q32 Transcript Day 20 pages 132-134
[53] Evidence Mr Williamson Q31 Transcript Day 18 page 4
[54] Evidence of Mr Vannan Q32 Transcript Day 20 pages 132-133
[55] Evidence of Mr Williamson Q31 Transcript Day 18 page 5
[56] File C page 245 Letter Williamson to Corlett 19.7.2000
[57] File C page 244 Letter Corlett to Williamson 12.7.2000

Williamson agreed with that view as do the Commission who also consider that it would be appropriate to obtain the observations of the Forestry Division in such circumstances.

12.61 In conclusion on this issue, the Commission find it difficult to understand why housing development on anything other than a limited basis was considered appropriate in the woodland part of the Mount Murray site although we acknowledge that had condition number 9 of the approval (see paragraph 12.59 above) actually been enforced, development on a modest scale might have been shown to be possible without risk to the trees. The planning office accepted schematic plans which bore no relation to the applicant's tree surveys. Bizarre or at least unique planning conditions were suggested by the developer and meekly accepted which inevitably placed many trees at clear risk. Even if it was still assumed that occupancy would be on a tourist basis, these failures amounted to professional negligence symptomatic of the irregularities endemic in government planning procedures at the time. Such a situation, making things impossible to control, simply should not have arisen in the first place.

vii) Committee Recognition of Permanent Residential Occupancy

12.62 We come in this sub-section to the circumstances under which the Planning Committee were finally to be made formally aware of the scope of the 1991 and 1992 permissions and the fact that they, and in fact the government itself, had lost control of the development. This was to occur at the meeting of the Committee on 20th June 1997, some five years after the second of the two main housing applications was given permission. It came about as a result of Gough & Co seeking confirmation from Mr Vannan on behalf of their client J G Kelly Homes Limited (the intended purchasers of the Village area) that permanent residential occupation was allowable under the 1991 and 1992 permissions. Had the developer not chosen to dispose of part of the estate and to seek the confirmation, it seems highly unlikely that Mr Vannan would have raised the matter at the Committee and it may well have been a further number of years before the true state of affairs was revealed, no doubt as a result of growing complaint.

12.63 Part of the reason why so many years were to elapse before the Committee was formally put in the picture was of course that housing construction of the main body of houses on the estate had not started until 1994. However the Commission must again draw attention, as we have done through this report, to the various occasions when government, ministers, Committee and officials were alerted at the very least to suspicions about the developer's intent and, on the evidence before us, did little. Even at the very beginning, and quite apart from the meetings in 1990 when Mr Spence told the Chief Minister, Sir Miles Walker, and Mr Mitchell what his client intended to do, Mr L G Wilson of the Department of Highways, Ports and Properties, in response to initial consultation in February 1991, recommended a minimum of two parking spaces for what he defined as "the private residential dwellings".[58] Mr S C Bradley of the Department of Highways, Ports and Properties was also to refer to the "developer's intention to sell freehold some or all properties in the resort village."[59] Of course it was not the responsibility of this latter department to follow up the planning implications of these comments. Nor should we here be taken as criticising the then Chief Minister as he had been discouraging about permanent residential development and had properly advised the developer to contact the tourism and planning departments who should have been expected to deal with the matters

[58] File A pages 23 & 24
[59] PA 91/0753 Document F13 and letter of 27.9.1991

professionally and with propriety. It is also relevant to note here that Sir Miles Walker had not thought it appropriate to refer to the Council of Ministers as he saw no significant items of principle, but he was not certain that he was then aware of the extent of the departure from the Development Plan and had thought that the matter was being dealt with quite properly.[60]

12.64 Much clearer signals were to follow. We have noted that Mr Midgley, in a letter of 28th February 1991 (paragraph 11.12) "wondered if the development "is going to end up a housing estate rather than a holiday complex".[61] We have made earlier reference to Mr and Mrs Reeves (paragraphs 11.15 and 11.16). Also, in a letter to the minister, Mr Brown, dated 3rd December 1992, Mr and Mrs Reeves pointed out that one of the two far reaching changes to the approval of 2nd October 1991 was to "ostensibly change tourist accommodation into private sector housing."[62]

12.65 Mr and Mrs Reeves indicated to the Commission that this letter was not directly acknowledged nor replied to[63] and subsequent evidence to the Commission indicates that the minister did not see it although it may well have been passed to the Chief Secretary. They were to write again to the planning office in the same vein with regard to PA 91/0212, as did another local resident, Mrs H G Irving-Lewis, who asked specifically in connection with the introduction of the Buyer's Guide into condition number 5 "What significance is this change to the permitted usage of the houses?"[64] Mr and Mrs Reeves later received a letter from the Chief Secretary dated 10th March 1993 which was a response to an earlier meeting which they had had with him in December 1992 to express various concerns. Mr Kissack's letter confirms that, amongst those concerns, was the loosening of the degree of development control in terms of the use of the proposed dwellings but he refers only to a procedural point which he understood to be the main concern over condition number 5 and not to the implications of the change. He justified this in a later representation[65] to the Commission on the basis that the decision (changing condition number 5) had been made some 14 months earlier and that the implications were already understood by Mr and Mrs Reeves. In the representation he also suggested that it might have been more appropriate for the minister, Mr Savage or Mr Watson to have queried an earlier Committee decision.[66] The Commission accepts that Mr Kissack had no formal authority in this respect and it acknowledges that the department itself, including the minister, could have raised concerns with the Planning Committee and did not. The point remains however that the change to condition number 5 was fundamental, and that there was a lost opportunity in this correspondence to bring the true position out into the open.

12.66 It should be noted here that Mr and Mrs Reeves also raised with Mr Kissack the legality of the issue by the Planning Committee on 4th October 1991 (the second initial decision notice) of amended conditions. Mr Kissack sought information on this point from Mr Savage and Mr Watson on which he chose to rely bearing in mind their professional experience, and the fact that the matter did not appear to be of paramount importance to Mr and Mrs Reeves.[67] There is no reason why Mr Kissack should necessarily have been aware of the flawed (and critical) nature of the advice

[60] Evidence of Sir Miles Walker Q16 Transcript Day 30 page 18
[61] File A page 41
[62] Mr & Mrs Reeves Document Q29 page 34
[63] Evidence of Mr & Mrs Reeves Q29 Transcript Day 14 pages 72 - 75
[64] PA 92/0212 File F18 Index page 12
[65] Annex 4
[66] Annex 4
[67] Annex 4

he received from Mr Watson and Mr Savage but the Commission nevertheless find it difficult to see why a legal view was not sought from elsewhere within government by reference to the government legal advisor.

12.67 The Society for the Preservation of the Manx Countryside and Environment also wrote to the Secretary of the Planning Committee on 27th May 1992 in connection with application PA 92/0212. Their comments were blunt and clear. "Of concern to us is the fact that it appears that the new housing could be sold off as permanent residential and not necessarily confined to holiday purposes. This is unacceptable and we are strongly opposed to such development. Permanent residential on this site is clearly different from the original application. It is also quite clearly contrary to the policies of the Island Development Plan."[68] The Society was of course mistaken about the "original application" but on the reasonable presumption that the Committee had this letter before them, it is regrettable that again it did not appear to induce reaction.

12.68 Finally, before looking at the events of 1997, it is relevant to recall that Mr Guard, a member of the Committee, encountered Mr Gubay on site in April 1993 and was alarmed at his comment that the houses "would make excellent residences". It seems that Mr Guard said to Mr Gubay that they were intended only as timeshare or holiday, which invoked a response which led Mr Guard to believe that he should not be so naïve as to think that that was going to happen.[69] Mr Guard raised his concern with Mr Vannan who appears to have dismissed that concern by indicating that the condition (to PA 91/0953) was far too complicated for Mr Guard to understand.[70] Mr Guard nevertheless followed up his concerns through Miss Corlett who assured him, in reliance on information from Mr Vannan, that the Committee had been completely happy with the conditions. On the basis therefore of his mistaken presumption that the tourism condition still prevailed, and his view that it was too late to do anything, Mr Guard took no further action. The matter was not apparently raised with the chairman or other members of the Committee and so another opportunity for enlightenment had passed.

12.69 We return to the event referred to at the beginning of this sub-section, the Committee meeting of June 1997. The background to this is set out briefly in section 3 (paragraph 3.96 – 3.97) where the point is made that this was probably the first time that the actual nature of the planning conditions in 1991 and 1992 were overtly acknowledged by the Planning Committee. How far the public would have been aware of this admission is not known but, with neither the meeting nor the minutes being open to public scrutiny, it must be assumed that the event passed almost unnoticed.

12.70 The background to the Committee meeting and the manner in which Mr Vannan presented the item are of some importance. Prior to the meeting Gough & Co, Advocates, had written to the Committee Secretary, Mr R Quine, seeking formal confirmation of what they had been advised by Mr Vannan, namely that "The planning approval (PA 91/0953)... allows either residential or tourist use of any individual unit."[71] Mr Vannan confirmed to Gough & Co following the Committee meeting that this understanding had been ratified. The minute is in fact, and for the first time in connection with housing approvals at Mount Murray, completely clear,

[68] PA 92/0212 File F18 Index page 13
[69] Evidence of Mr Guard Q4 Transcript Day 8 page 22
[70] Evidence of Mr Guard Q4 Transcript Day 8 page 22
[71] Mr Jackson Document Q7 Attachment letter of 21 May 1997

stating that "This [the Buyer's Guide] effectively allowed the sale of dwellings for permanent occupation."[72]

12.71 The minute also states that the Committee noted the situation "with concern" but does not indicate whether Mr Vannan was asked for an explanation. The Commission therefore raised this with Miss Corlett who was present at the Committee for the item, and with the chairman at that time, Hon Mr S C Rodan MHK.

12.72 Miss Corlett stated with regard to the meeting that she remembered it very clearly.[73] Her view was that the Committee reacted not just with surprise and concern, but with alarm. With regard to Mr Vannan's observations to the Committee, she said that he never gave the impression that it had always been permanent residential occupancy. She further said that he had given the impression that it was just as much a surprise to him that something which he'd been involved with which started off as a loosely controlled tourist development had suddenly become a housing estate.[74]

12.73 Mr Rodan confirmed that he and the other members of the Committee had reacted with concern but he claimed that it was not clear at that time that it would in fact necessarily be an estate for permanent occupation.[75] He also indicated that his concern was as much over the density of the scheme if it were to be permanently occupied as well as the type of occupancy. His understanding of the reason why dwellings could now be occupied permanently was "that a legal interpretation of the Buyer's Guide had been sought and in accordance with that legal interpretation, the properties were available for permanent as opposed to solely tourist occupation."[76]

12.74 The Commission has no reason to doubt Mr Rodan's recollection on this rather critical point, which would be consistent with Miss Corlett's observation that Mr Vannan made no reference to permanent residential occupancy having already been accepted six years before. There is no evidence before the Commission of any kind of legal advice being taken by the planning office in 1991 or even later, and Mr Rodan recalled that the item was considered on the basis of an oral report".[77] As our report has made quite clear, Mr Vannan knew of the applicant's intent before the outline application was first submitted and he would have been well aware by May 1991, that permission had effectively been given, and that, by October 1991, a mix of tourist and permanent occupancy had received formal approval. There would, therefore, have been no need for any legal advice neither is it referred to in the June 1997 minutes notwithstanding their clarity in other respects.

12.75 Whether the Committee was actually misled on this point in June 1997 is not clear from the evidence but what is certain is that the members were not told permission for permanent residential use had in fact been given many years before. Curiously, Mr Vannan's later letter to Gough & Co dated 4th July (1997) stands in some comparison to the clarity of the official minute and avoids any explicit reference to permanent residential occupancy being acceptable.[78] It was apparently enough however to satisfy Gough & Co and J G Kelly Homes Limited completed their purchase of the Village area in July 1998.

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[72] File A page 166
[73] Evidence of Miss Corlett Q13 Transcript Day 10 pages 119
[74] Evidence of Miss Corlett Q13 Transcript Day 10 page 123
[75] Evidence of Mr Rodan Q20 Transcript Day 13 pages 6 & 7
[76] Evidence of Mr Rodan Q20 Transcript Day 13 page 5
[77] Evidence of Mr Rodan Q20 Transcript Day 13 page 14
[78] Mr Jackson Document Q7 attachment

viii) The Present Position

12.76 Whatever may have been the Committee's expectations in June 1997 the fact was that since at least early 1996 the houses were being sold for permanent residential use as we have explained in paragraph 3.90 above.

12.77 There is also nothing to indicate that any of the properties or the remaining sites have been or are currently being marketed on a tourism occupancy basis. We know from the direct evidence of Mrs Gough and Mrs Palmer, who worked in the sales office, that they were not, in 1996, instructed to offer houses or sites on a tourist basis. We know also from the evidence of Mr Jackson that although, at the outset, it had been his intention actually to keep a number of houses ourselves for tourist use,[79] this was not pursued and all the houses were marketed and sold as permanent homes. The total number of such dwellings in the Village area is seventy six and, based on the Commission's site inspections, all appear to have been completed and occupied.

12.78 With regard to the parts of the Mount Murray site other than the Village area remaining under the ownership of Mount Murray Country Club, a large proportion of them are either built and occupied or under construction. The Commission asked Mr Willers on behalf of the company whether any of these were occupied on a tourist basis but he said it was a matter which was private to the purchasers and he did not know.[80] The evidence of Mr Toohey, Chief Executive of the Department of Tourism, is that, in 2003, none of them are used for tourism purposes because none have been registered for tourism.[81] The view of the Commission is that, whether or not any are so occupied, they are certainly in such small quantities that it does not affect the basic residential nature of the estate. That does not mean that none were contemplated at some stage in the evolution of this part of the estate but, if they were, neither Mr Willers nor Mr Gubay was prepared to confirm this or say at what stage a decision was taken to abolish such a strategy. What is clear is that permanent residential use formed part of the original application and, although denied in the initial decision, was pursued with such single mindedness that it was undoubtedly part of the overall objective.

End of Section 12

[79] Evidence of Mr Jackson Q7 Transcript Day 8 page 63
[80] Evidence of Mr Willers Q2 Transcript Day 7 page 68
[81] Evidence of Mr Toohey Q10 Transcript Day 30 page 35