

PART B

3. BACKGROUND

i) General

- 3.1 The Commission acknowledges the assistance which it has received from the report of Professor Crow. In particular, identification of some of the key documents and the dates of some of the key events were instantly to hand when we started our work, and this was valuable.
- 3.2 The Commission has nevertheless examined a much wider range of events and circumstances, and in much greater depth, than did Professor Crow. This is not intended as any criticism of Professor Crow's work, but is what we see as inevitable given the nature and powers of the Commission, which are quite different to those given to Professor Crow. It is inevitable also because the publication of Professor Crow's report did not assuage public concern in respect of Mount Murray matters.¹ It was this failure to assuage which led to our appointment. We briefly analyse Professor Crow's report in sub-section (xi) below, but make a number of initial points here.
- 3.3 We think it appropriate to state, in the context of this reference to Professor Crow's report that, in a number of important respects, we do not share all the conclusions reached by him, and that we do extend conclusions to other key areas which Professor Crow did not explain nor otherwise express conclusions upon in his report. These conclusions we make are nevertheless highly relevant to the government's handling of the irregularities upon which Professor Crow did report, as the detail of this report explains.
- 3.4 It is also appropriate to refer here to the unpublished annex 5 of Professor Crow's report, which annex we have read. At the time of presentation of his report he indicated that he did not wish that annex to be published. He retained that view in his evidence before us for the reason, as he put it, that it seemed to him invidious that the individuals concerned, not having committed any crime, should have their names wantonly put up for public vilification and to the potential prejudice of any disciplinary measures that might then have been considered in respect of any non-criminal breaches of discipline.² We consider it right that we should respect Professor Crow's wishes on this. It is not an impediment to our report to do so, nor to the public interest, as our investigations deal fully and directly with matters with which that annex is concerned; we have reached our own conclusions on such matters, which are well covered in our report.
- 3.5 In the chapter of his report which constituted his review of the planning and development history of the Mount Murray site Professor Crow considered planning conditions which required that development be completed within four years otherwise the approvals given for that development would expire.³ These conditions had been applied to two significant planning approvals at Mount Murray. It is explained by Professor Crow that the times for compliance with the conditions were extended on two occasions, that the Attorney General had advised that the conditions were unenforceable and unreasonable, that the Department of Local Government and the

¹ Document C2 Hansard 19.2.2002 T526 right hand column, T529 left hand column, T530 right hand column, and Document C5 Hansard 19.3.2002 T576 right hand column

² Prof Crow Document P11 paragraph 11

³ Document C6 Crow Report paragraphs 1.35 – 1.40

Environment only denied extension of time, or renewal, if there was a material change of circumstance since approval was granted, and that there was not in his view a real change of circumstance. Professor Crow had no recommendation on this issue. The Commission does not propose to consider this matter, other than as an assistance in chronology, because, as an issue, it has been overtaken by events. Mr I McCauley, Director of Planning and Building Control at the Department of Local Government and the Environment has confirmed⁴ to the Commission that his department no longer applies such conditions, and that the standard practice now is to condition commencement of development, not completion.

- 3.6 The Commission also considers it appropriate to say at this early stage that the Commission has no reason to differ from Professor Crow's conclusion that fundamentally there is no problem of title in the Mount Murray development, and accepts this as correct. This is explained further, but still briefly, in section 14 of this report. The issue of planning permissions is more complex and is dealt with fully in the report.
- 3.7 This section of our report is intended to set out a limited but adequate history of events from the very start, so that the remainder of the report is sufficiently clearly seen within its overall context for it to be properly understood and appreciated.

ii) **Site and Surroundings**

- 3.8 Prior to the commencement of development at Mount Murray, the site, once partly in use for an hotel known formerly as Alex Inn, café, play area and boating lake, was overall an attractive rural location, but one which was significantly marred by the derelict structures of the hotel and cafe, although these were later demolished.⁵
- 3.9 The following description comes from our own inspection of the site, and from notes prepared for the Planning Committee on 4th February 1991⁶.
- 3.10 The Mount Murray development is in the south of the Island, in the countryside between Douglas and Castletown just north of Santon, and adjacent to the west side of the A5 Castletown Road, at its junction with the C21 minor road. It is partly in the Parish of Braddan and partly in the Parish of Santon, divided by the Crogga river. Prior to its development the part of the site adjacent to the A5 was wooded, with ponds and derelict buildings. The part farther from the A5 was farmland. The site covers in total some 17 hectares.
- 3.11 The features of the development include a comparatively large hotel, a sports and leisure and health centre and ancillary buildings, a golf course, and many houses. The houses are adjacent to the hotel and also spread around part of the golf course. The golf course comes down through these houses towards a small lake just in front of the hotel. There are also a number of significantly sized ancillary buildings which are on both sides of the C21, as is the golf course. More houses are under construction. A significant feature of the built development is that the structures are almost all white. Another feature is that there are still a large number of mature trees within the development, although many have been lost. Community services, such as shops, schools, churches, medical services and satisfactory access to public transport are not immediately to hand. Overall the initial impression given is of a major but somewhat isolated development in a largely rural area.

⁴ Mr McCauley P12 letter 3.6.2002

⁵ Mr Gelling Document Q23 1 & 2

⁶ Mr Sinden Document Q12 App 1

3.12 The house types vary between smaller houses clustered in the area to the south of the hotel and larger houses in the closer vicinity of the golf course. Apart from their colour and generally similar design approach, houses types vary considerably. In a number of instances they do not relate in an appropriately neighbourly way to nearby houses in the sense of overlooking and closeness. The road system is extremely basic and does not allow for larger vehicles, such as service and emergency vehicles, to move easily around the development. Off-street parking is not generous and is below private estate standards. Apart from the facilities of the hotel, sports centre, other like activities and golf course, there is little, if anything, in the way of community facilities. There is no on site local shop (excluding the leisure facilities shop)⁷ although there is a plot in respect of which planning permission for a shop lapsed in December 1998.⁸ Overall, however, the visual amenity impression of the development in itself is quite pleasing.

iii) Planning History of Site Pre-January 1991

3.13 Professor Crow reports⁹ that the Isle of Man Courier records that on 1st September 1978 the derelict Alex Inn and three fields totalling an area of 10.4 hectares was sold to a firm in Ramsey, following an unsuccessful attempt to secure residential development of the site.

3.14 In 1979 Pontins, the leisure organisation, were granted approval of a holiday camp here but interest in this was not pursued.¹⁰ Professor Crow reports that in 1986 a Swedish company expressed interest in building an hotel.¹¹ The hotel was not built.¹²

3.15 It can be seen from the planning application, referred to at paragraph 1.1 above, that prior to its submission discussions had taken place between the applicant, Radcon Village Resorts Limited (Radcon), and the then Chief Minister, Sir Miles Walker, Mr S A Mitchell, then a consultant with the Department of Tourism, and Mr J M Watson, Chief Architect and Planning Officer to the Department of Local Government and the Environment. Correspondence shows that some of their discussions at least had taken place in about November 1990.¹³

3.16 The statutory document of most significance at that time was the Isle of Man Planning Scheme (Development Plan) Order 1982¹⁴ which had effect from 1st August 1982¹⁵ but was amended in 1987 and 1988. This Statutory Plan designated the 'front' part of the site adjacent to the A5 as 'Tourist Accommodation in Parkland'. The rear part, further from the A5 was not zoned for development but was designated as 'High Landscape Value and Scenic Significance' with a small band of designated woodland at the rear.¹⁶

3.17 The Braddan Local Plan,¹⁷ in draft form in January 1991, but awaiting consideration by Tynwald in February 1991,¹⁸ also identified the 'front part' of the site for tourist

⁷ Evidence of Mr Vakil Q28 Transcript Day 14 pages 53-55 & 57

⁸ File C page 286

⁹ Document C6 Crow Report paragraphs 1.4 – 1.5

¹⁰ Document C6 Crow Report paragraphs 1.4 – 1.5

¹¹ Document C6 Crow Report paragraphs 1.4 – 1.5

¹² Document C6 Crow Report paragraphs 1.4 – 1.5

¹³ File B page 1

¹⁴ Document C3 1982 Development Order

¹⁵ Document C3 1982 Development Order paragraph 1.1

¹⁶ Document C3 1982 Development Order

¹⁷ Document C46 Braddan Local Plan Government Circular 6/91

accommodation in parkland (insofar as the site was in Braddan), and policy 4.9 of that draft Plan attached a three year limit to this land use proposal.

- 3.18 The then consultation draft of the Southern Sector Plan of the Island Strategic Plan accorded with the Development Plan. The draft referred to the policy for “Mount Murray” as being “in accordance with the Braddan Local Plan”.¹⁹

iv) Pre-Planning Application Meetings in 1990

- 3.19 In paragraph 3.15 we referred to discussions between the developer and the Chief Minister, the Chief Architect and Planning Officer, and a representative for the Department of Tourism before the 16th January 1991 application for the development at Mount Murray was submitted. We have taken evidence from two of the government people concerned. We did not take evidence from Mr Mitchell, the representative of the Department of Tourism. He currently lives in Lancashire, England and we were satisfied that he suffers from ill health of such a nature that it was inappropriate to seek to persuade him to return to the Island to give evidence to the Commission, nor even to submit relevant written questions to him for his response.

- 3.20 We did ask Mr Watson, the Chief Architect and Planning Officer, about these meetings. Regrettably his memory of events was not good. He had no specific recollection of a meeting with the developer prior to the application.²⁰ However, correspondence indicates that there were meetings between the developer and the Chief Minister and Mr Mitchell for the Department of Tourism on 14th November 1990.²¹ The letter referring to this, dated 14th November 1990,²² said that the investment in question was in the region of £20 million. The letter of 16th January 1991,²³ accompanying the application, indicates that there was a meeting on 20th November 1990 between the developer and Mr Watson, and that at that meeting Mr Watson suggested various zoned sites for the developer to research and that an outline planning application be submitted when a site was found. It appears from the letter that of the suggested sites the Mount Murray site was regarded as the most suitable by the developer. It further appears from the letter that Mr Watson had also suggested that, as part of the application, there should be enclosed for information purposes “Resort Village” brochures where the applicant had previously been an investor. The application letter itself stated that the Buyer’s Guide and Notes of Presentation, which are of great significance in our investigations, and were stated to be part of the application, were additional to the documents advised by Mr Watson.

- 3.21 We also heard evidence from Sir Miles Walker, then Chief Minister, who, apart from minor and insignificant differences relating to dates, confirmed and was able to give detailed evidence about these meetings.

- 3.22 Mr W B Vannan, who was, in 1990 and 1991, Architect/Planning Officer within the department, was also asked about having pre-application discussions. He said that he was unable to remember whether or not he had met with the developer prior to the submission of the application, but he did say that it would be unusual for a developer to make contact with a Chief Minister prior to a planning application being

¹⁸ Mr Sinden Document Q12 Appendix 1

¹⁹ Mr Sinden Document Q12 Appendix 1

²⁰ Evidence of Mr Watson Q3 Transcript Day 7 page 88

²¹ File B page 1

²² File B page 1

²³ File A page 9

submitted.²⁴ Mr Vannan later became very closely involved with this application and its subsequent history and, for reasons later explained, we are satisfied that he had a full understanding of the application before it was submitted.

3.23 Although we do not have evidence from Mr Mitchell, we do have evidence about the state of the tourist industry at the beginning of the 1990s. We have just referred to Mr Vannan. He told us that at the time of the application in January 1991 the Island was struggling in terms of new tourist facilities.²⁵ More significantly we heard from Hon Mr A R Bell MHK, Minister for Tourism at the time. He explained to us²⁶ that in line with most UK traditional seaside resorts, the Isle of Man experienced a steady decline as a tourist destination throughout the 1980s, mainly due to the changing tastes and expectations of tourists and also because of an almost total lack of investment in infrastructure, particularly accommodation. By 1991 tourist arrivals had reached an all time low and the Isle of Man product had become almost unsaleable. He said that by that time the Department of Tourism faced a major battle, not just to revive the industry, but to prevent its total collapse. So, he said, from 1986 his department resolved, as its top priority, to attempt to stimulate investment in all aspects of the Island's infrastructure from both internal (by way of upgrading) and external sources.

3.24 Isle of Man tourism was at rock bottom at that point, he said²⁷ "We desperately needed to stimulate new infrastructure development, and to have the added bonus of a major international name attached to the Island as well would have been quite a coup for the Island at that juncture." The international name he was referring to was the 'Radisson Hotel Group'.²⁸ We find this explanation of the state of tourism on the Island at that time as a significant factor to bear in mind in considering the events which followed.

3.25 Against the above brief, but sufficient, account of background circumstances prior to 16th January 1991 we now turn to consider the first direct major step in the events which have led to this Commission.

v) The Planning Application Dated 16th January 1991

3.26 We have referred to this in paragraph 1.1 above. The letter accompanying the application is referred to at paragraph 3.20 above. More details of the application follow.

3.27 The answer to question 5²⁹ on the application form, which question sought a description of the proposed development, refers to a "List Attached", as explained in paragraph 1.1 above. The "attached list" is in the planning file.³⁰

3.28 The list describes the proposed development. The "Resort Village" is said to comprise a 40 room (80 bed) motel and proposed 50% extension, club house complex to include: reception and administration and Villa Rental Office; Club room facilities, convention centre for 250 delegates, restaurant, coffee shop, inn, kitchens and service facilities; a fitness and health centre and proposed extension with

²⁴ Evidence of Mr Vannan Q32 Transcript Day 20 pages 11-13

²⁵ Evidence of Mr Vannan Q32 Transcript Day 20 page 11

²⁶ Mr Bell Document Q9 page 1

²⁷ Evidence of Mr Bell Q9 Transcript Day 9 page 6

²⁸ Evidence of Mr Bell Q9 Transcript Day 9 page 5

²⁹ File A page 12

³⁰ PA 90/1842 File F11

swimming pool and changing rooms; two racquet squash courts; two tennis courts; bowling green; croquet lawn; jogging trail; 150 villas and patio homes and three scenic lakes including water features such as waterfalls, bridges and island as illustrated in an attached visual layout.

- 3.29 In a document identified in answer to question 12 on the application form as “Site Evaluation”, the ninth of the items listed in that answer, is a reference to a Schedule of Accommodation. This explains that the hotel floor area was to be 162,000 sq ft in a total land area of 42 acres. It is added that the proposed layout utilises the total site as opposed to only the 20 acres zoned for tourist related development. The reason was said to be an analysis which had taken account of site contours, major features such as trees, and market research. It was also noted that the proposed development shown as covering 42 acres could also be contained within the 20 acres of zoned land, but this was felt to be detrimental to the overall site concept.
- 3.30 The last of the documents listed in answer to question 12 of the application form was cited as Notes of Presentation.³¹ This document³² is six pages long. It seeks to explain a ‘Resort Village’ as a concept and identifies some investor benefits. Detail is given of the development. It is explained that the hotel requires beds from the housing units to be rented out as part of its rental programme to holidaymakers. Importantly, on the fifth page of the document, it says that “experience at other resorts shows that approximately 10% of houses sold fall into the residential category (see page 15 of the Buyer’s Guide). But this 10% is continually changing hands when Residents find that this type of development, which is tourist orientated, is not conducive to resident living”. As a preliminary comment it is clear enough to us from this extract that the proposal for which planning permission was being sought does include use for permanent residential use.
- 3.31 The extract set out in the previous paragraph refers specifically to page 15 of the Buyer’s Guide in the context of permanent residential development. The Buyer’s Guide is the eighth of the documents listed in answer to question 12 of the planning application.³³ Pages 15 and 16 of the Buyer’s Guide,³⁴ so far as relevant are examined more fully in section 11 of this report. However it can be noted here that the Buyer’s Guide sees a clear link between residential uses and what are referred to as resort activities (i.e. recreational activities) and defines a resident as a person who lives in the (resort) village for more than half a year.
- 3.32 It will be seen that the Buyer’s Guide clearly contemplates that housing units would be for permanent residential use as well as for tourism use. We will return to this, but it is pertinent to mention here that this was a view which was acceded to by virtually all the many witnesses appearing before us to whom this proposition was put.

vi) Approval in Principle 22nd February 1991

- 3.33 The planning application of the 16th January 1991 was considered at a meeting of the Planning Committee held on the 22nd February 1991. At this meeting approval in principle³⁵ was given for construction of the resort village. This approval was subject to compliance with specified conditions or modifications. There were 16 such conditions or modifications and the approval was issued on the 1st March 1991. The

³¹ File A page 13

³² File A page 27

³³ File A page 13

³⁴ File C pages 120 and 121

³⁵ File A page 19

word “modifications” is to be noted as it is relevant to a practice undertaken by the Planning Committee. The conditions are interesting. Condition number 3 indicates that the approval relates to an amended layout plan numbered 1A which was received only on the 19th February 1991, and that no approval was to be implied to any previously submitted layout plan, and that all new buildings had to be sited within that part of the site designated for development on the Development Plan.

- 3.34 The theme of condition number 3 is continued in condition number 4. This condition states that the permission for use of the southern part of the site (comprising the area designated for development on the Development Plan) is for tourist accommodation and associated facilities as shown on plan 1A referred to in condition number 3. It continues and states that the northern part of the site may be used for recreational purposes in association therewith, but must remain predominantly green open space.
- 3.35 Condition number 5 states that: “The proposed buildings must be occupied only by bona fide tourists; permanent occupation of the buildings is not permitted.”
- 3.36 These are the three most significant conditions. It can be seen that they are indeed modifications. The application itself wished to develop the whole of the site (see paragraph 3.29 above) and the application did intend that the development should include permanent residential use (see paragraphs 3.30 to 3.32 above).
- 3.37 It appears that the reduction in the development area followed from a letter written to the applicant by Mr B J Sinden, a Planning Officer, dated 5th February 1991, which drew attention to the fact that the northern half of the defined site was not designated for development and which asked for an explanation as to why it was necessary to propose the erection of buildings on this part of the site,³⁶ and also from a meeting held on 13th February 1991.³⁷ Consequently Mr G L Spence, on behalf of the applicant, wrote to Mr Vannan on 19th February 1991 submitting amended Plan 1A “as requested” for approval at the Planning Committee meeting on 22nd February 1991. The areas of the motel and other central facilities were said to be unchanged but villas had been reduced from 150 to 63. It is of interest to note that Mr Spence said in his letter that he did not intend at that time to answer the above question raised by Mr Sinden. It is also significant that Mr Spence asked that consideration of the plans already submitted (i.e. for the full site) be deferred, as suggested by Mr Vannan. Thus an incremental approach appears to be identified, with the agreement of Mr Vannan. A limited area in accordance with the Development Plan was for quick approval on the 22nd February 1991, then later would come the deferred plans for the whole site and the whole development. But an initial approval would have been achieved.
- 3.38 The restriction to tourism no doubt comes from the advice of Mr Sinden whose notes,³⁸ which he used in addressing the Planning Committee, say that he thought that the proposed land use was tourist accommodation and he recommended the condition limiting it to tourism. We pause to note here that it seems to us to be very odd that the advising Planning Officer is only able to say that he thinks the proposed use to be a particular use. We return later to this point.³⁹

³⁶ File A page 26

³⁷ PA 90/1842 File F11

³⁸ Mr Sinden Document Q12 Appendix 1

³⁹ Paragraph 17.43 below

- 3.39 On the 11th March 1991 the applicant sought a review.⁴⁰ Review is part of the development control system in the Isle of Man and will be explained later in this report. The grounds for the review were set out in detail in a letter from the applicant dated 20th March 1991.⁴¹ The letter referred to plan 1A that had reduced the area of developable land and comments from the applicant's architect were attached. The letter went on to say that after further consideration, the amended plan 1A submitted on the 19th February 1991, had "so strayed from the original concept as to be less aesthetically pleasing and economically unviable". This, of course, could be foreseen in the letter from Mr Spence dated 19th February 1991 referred to in paragraph 3.37 above.
- 3.40 The applicant therefore submitted a revised plan, 1B, modified so as to take development over a much wider area and into that part of the site which was not designated for development, and also matching the original application. Condition numbers 3 and 4 were requested to be amended accordingly. Open agricultural land to the rear of the site was proposed for development. On the 11th April 1991 Mr Sinden sent a memorandum to the Chief Architect and Planning Officer.⁴² He urged the upholding of the initial decision. He said that the extent of the designation on the Development Plan and the draft Local Plan for Braddan were clear and without doubt. There was a clear boundary identified by physical features. There was a danger of precedent. And he was unsure as to why extension was necessary.
- 3.41 Before proceeding to the decision on the review, three matters are worthy of note at this stage. First, no review was sought of the condition that restricted the development to tourism, notwithstanding the residential element of the application which we have explained above. The second matter is that a letter was sent on the 28th February 1991 by a local resident, Mr K Midgley,⁴³ which commented that the dwellings which were proposed in the fields on the Douglas side of the Mount Murray estate, as seen on the plans, were houses with garages, which made him wonder if it was going to end up as a housing estate rather than as a holiday complex. The response to this letter from the Planning Committee was⁴⁴ that a decision had already been reached on the application on the 22nd February and therefore his name could not be included on the list of interested parties at review or appeal; it was however pointed out that the contents would be placed on file and brought to the attention of the Committee should the application proceed to the review or appeal stage. The letter was certainly put on file, but we have no evidence one way or the other that it was brought to the attention of the Committee. Such evidence as we do have on the matter is absent any reference to it. The significance of Mr Midgley's letter we see to be as an illustration of an early appreciation by a local resident who, simply by looking at the plans, understood the flavour of what was proposed. Third, we also consider it to be appropriate to draw to attention that on the 3rd April 1991⁴⁵ Mr Mitchell wrote to commit support from the Department of Tourism in respect of the forthcoming review. The reasons which were given indicated that the proposal was considered to be a good example of present day thinking and would aid regeneration and tourism's contribution to both employment and the economy.
- 3.42 The Planning Committee met on the 12th April 1991 in review of the application and gave approval in principle for the application subject to conditions or modifications as

⁴⁰ File A page 40

⁴¹ File A page 44

⁴² File A page 52

⁴³ File A page 41

⁴⁴ File A page 42

⁴⁵ File A page 51

specified. The effects of the previous condition numbers 3 and 4 were changed by new condition number 4 which indicated that the approval related to the amended layout plan 1B. This plan indicated development over much of the site and into most of the land which was not designated for development. The condition restricting the use to tourism continued; now in condition numbers 5 and 6. The approval was issued on the 16th April 1991.⁴⁶ It is also relevant to note condition number 13 at this stage; it had not changed from the earlier decision, but was to do so in due course. This condition stated that foul sewage detail proposals had to be submitted with reserved matters.⁴⁷ At a later stage, as we will see, this was changed in a material way.

- 3.43 On 26th April 1991 the applicant appealed against the review decision of 16th April, but grounds for such appeal were not given.⁴⁸ The appeal was withdrawn on 1st May 1991.⁴⁹

vii) Correspondence and Communication in May 1991

- 3.44 On the 9th May 1991⁵⁰ Mr Bell, minister at the Department of Tourism and Transport, wrote to Mr Spence. He referred to recent correspondence from Mr Spence and said that he had now instructed Mr Mitchell (from his department) to undertake positive discussions with representatives of the Department of Local Government and the Environment in order to seek a more appropriate planning solution for the Alex Inn project. Mr Bell went on to say: "I think you appreciate our dilemma and the possible shortcomings of the planning systems, however, we will endeavour to identify a more acceptable way forward with an emphasis on multi-ownership with associated letting thereof." It is relevant to interpose here that the Planning Committee Secretary told us that he had received no communication from anyone at that time to suggest that there were any problems with the planning conditions which were then in place.⁵¹ There was then, in Mr Bell's letter, reference to a meeting that would take place later that month following which contact would be resumed with Mr Spence. The events which followed on this early indicator of events to come are of much interest.
- 3.45 Four days later, on the 13th May 1991, Mr Bell sent a three page fax to Mr Spence's office.⁵² It appeared to contain a letter dated also the 13th May 1991 which had been sent to Mr Bell from Mr Vannan, Architect/Planning Officer in the Department of Local Government and the Environment. The letter referred to a discussion which had apparently taken place between Mr Bell, Mr Vannan and Mr M Savage, Chief Executive of this Department. The whole of that letter is important but the first paragraph has special significance, it reads: "I would confirm that the planning conditions attached to PA 90/1842, specifically numbers 5 and 6, are in no way in conflict with the principle of the development as set out in the documentation attached to the application." It will be recalled that conditions number 5 and 6 limited the use to tourism use, and that the documentation attached to the application made it clear that permanent residential housing was being sought under the application (see paragraphs 3.42 and 3.30 to 3.32 above respectively). The paragraph was completely in error in saying that there was not the conflict referred to. There is not dispute about this from the many witnesses who were asked about the point.

⁴⁶ File A page 53

⁴⁷ File A page 55

⁴⁸ PA 90/1842 File F11

⁴⁹ File A page 56

⁵⁰ File A page 57

⁵¹ Evidence of Mr Magee Q14 Transcript Day 11 page 49

⁵² File A pages 58 - 60

- 3.46 The letter goes on some paragraphs later to say that Mr Vannan would “reconfirm that the concept as proposed is fully acceptable to (his) Department and is indeed one which [his] Department would support”. This statement is also incorrect if the evidence which was given on this point by several members of the Planning Committee of the time and period is accepted. They have told us that had it been known that the proposal was to include permanent residential housing as one of the uses then the proposal would not have been permitted.⁵³ We assess this evidence in section 11 (vii) below. This letter was copied to Hon Mr J A Brown MHK the Minister for Local Government and the Environment.
- 3.47 On the same day that Mr Vannan informed Mr Bell on the matter as set out in the last two paragraphs above, a telephone call was made by Mr Bell to Mr Spence. A transcript of that message which was left on an answering machine for Mr Spence is available to us.⁵⁴ The message should be read as a whole, but it is appropriate here to set out some material points which Mr Bell communicated to Mr Spence. He said that he had just had a meeting with the Planning Officers and other officials related to the Planning Committee about the stipulation, the condition, on permanent use of accommodation for Mount Murray. He went on: “... we believe and the Committee have confirmed it that the definition of tourist within those conditions is sufficiently flexible to allow your scheme to go ahead. There’s no need for you to apply for change of use for permanent accommodation, residential accommodation out there, the present conditions will allow you to do exactly what you want.”
- 3.48 On any view it appears most curious and, in our view, unacceptable, that a minister should be speaking in such terms to a developer when condition numbers 5 and 6, which had not then been appealed, said so plainly that use at Mount Murray was limited to tourist use. However, it did reflect what was set out in the letter which Mr Vannan wrote on that date and which has been referred to in previous paragraphs. There is also clear inference that these issues had been the subject of earlier discussion or communication between Mr Bell and the developer or his representative. It was no doubt this letter which Mr Bell was referring to when he went on in his telephone message to Mr Spence: “Now there’s a letter of comfort coming from the Planning Committee today which I will fax to you later on today I hope and you’ll be able to see what I mean then... They’re quite happy that your proposals comply with their requirements so that there shouldn’t be any problem at all. You’ll be able to go ahead now on exactly the basis that you want but the letter of comfort should give you a clear indication as to – or confirmation – as to what the Committee’s attitude is. ...” It can be seen that a clear run has been given to the developer although, on the evidence which we have heard and will come to in more detail later, the Planning Committee itself appeared to know nothing of such actions which Mr Bell said that they had taken.
- 3.49 Another letter was written to Mr Spence three days later, on the 16th May 1991.⁵⁵ This letter came from Mr Savage, Chief Executive of the Department of Local Government and the Environment. It started by incorrectly referring to him having written to the Minister of Tourism on the 13th May. It then continued in a curious way in that it said: “I set out below the outcome of our discussions today with Mr Gary Spence on your behalf, myself and Mr Savage, Chief Executive on behalf of this Department.” The curiosity here is that Mr Spence was the proposed recipient of the

⁵³ Evidence of: Mr Guard Q4 Transcript Day 8 pages 19 & 20; Mr Faragher Q8 Transcript Day 8 page 109 & 117; Mr Cretney Q22 Transcript Day 17 page 20

⁵⁴ File A page 189

⁵⁵ File A page 61

letter and Mr Savage the apparent author. Perhaps Mr Vannan had drafted the letter for Mr Savage to sign. The letter went on to confirm the incorrect observation that if occupation was in accordance with the principles laid out in the Buyer's Guide and the Villa Owner's Rental Agreement then this occupation would be in accordance with condition numbers 5 and 6 (the limitation to tourism conditions) of the approval.

- 3.50 The letter also raises another important matter, in its last paragraph. It says: "As we discussed, you may also wish to submit to us a draft Agreement for Sale for the units which could then be approved by the Planning Committee as being in accordance with the terms of the planning consent..." The importance of this will be seen as we move on to consider what happened to that draft Agreement for Sale referred to here. We will come back later to consider in more detail the evidence of members of the Planning Committee on this matter and also this letter dated 16th May 1991.⁵⁶ We note that doubt was cast on the signature on this letter being genuinely the signature of Mr Savage.⁵⁷ We are however satisfied that this is a genuine signature, having taken expert advice on the matter as well as making our own judgement upon it.
- 3.51 A draft Agreement for Sale was sent to the Department of Local Government and the Environment on the 22nd May 1991 and it seems that there was a meeting on that date between Mr Spence and Mr Mitchell of the Department of Tourism, because on the 23rd May 1991 Mr Spence wrote to Mr Mitchell referring to that meeting.⁵⁸ In this letter Mr Spence said, of the proposal that he was pursuing, that research on the concept showed that some people would want to live on the proposed development as one of the inducements for making the investment. He said that that had been clear from the Buyer's Guide and Notes on Presentation. He went on to say that if "you want" this and other related investments which Mr Spence's clients had under consideration, totalling close to £50 million, then he had to have approval of the Agreement for Sale. This statement was followed by what amounts to a threat to go elsewhere unless there was such approval. This message was transmitted by fax.
- 3.52 A proposed Agreement for Sale was considered by the Planning Committee on the following day, the 24th May 1991.⁵⁹ It had not appeared as an item on the agenda for that meeting.⁶⁰ The agreement was approved. The minutes which reported this item are obscure.⁶¹ They are set out in full in paragraph 3.56 below. There was no disagreement between witnesses expert in this field that the consideration of such an agreement at the Planning Committee meeting was not a planning matter and in their experience was unique for consideration at a Planning Committee.⁶² The draft Agreement for Sale which Mr Spence had sent to the department is extremely clear as to what was being sought for approval by the Committee. That document⁶³ referred to properties to be sold at the Mount Murray site. Paragraph 10 of that version of the Agreement⁶⁴ said, so far as relevant, that "The Scheduled Property is sold subject to... (various rights and easements) and in particular those set forth in the second Schedule hereto". The second Schedule to the Agreement says,⁶⁵ so far

⁵⁶ File A page 61

⁵⁷ Evidence of Mr Lewin, Clerk to Braddan Commissioners, Q33 Transcript Day 22 page 54

⁵⁸ File A page 63

⁵⁹ File A page 65

⁶⁰ Evidence of Mr Magee Q14 Transcript Day 11 page 62 and Planning Committee Meeting Book File F3

⁶¹ File A pages 65 & 66

⁶² Mr Sinden Q12 Transcript Day 10 page 56; Mr Watson Q3 Transcript Day 7 pages 110 & 111

⁶³ File B page 220

⁶⁴ File B page 222

⁶⁵ File B pages 223 & 224

as relevant, that: "The Scheduled Property is sold subject to and with the benefit of the following: (3) the use of the Scheduled Property for either one or more of the following: (a) permanent occupation and/or.... with occupation by the owner(s) or others accordingly." There is a boxed footnote to that Agreement which appears on the same page as Schedule II and says: "This draft Agreement is hereby approved by the Department of Local Government and the Environment Planning Committee under the terms of planning approval 90/1842 and the documents submitted with the Planning Application, being the Buyer's Guide and the Villa Owner's Rental Agreement. Specifically, the use of paragraph (3) of the Second Schedule above is confirmed as being in compliance with condition numbers 5 and 6 of the said Approval." The document which the Committee had been sent by Mr Spence could not have more plainly set out that permanent residential occupation was something which was intended under the proposal for Mount Murray.

3.53 However, although received by officers it appears that this version of the draft Agreement for Sale is not the version which was put before the Planning Committee and approved by it. Recollections by members of the Planning Committee were not clear on the nature of the draft Agreement for Sale.⁶⁶ They were shown in evidence the draft document submitted by Mr Spence. However we find that the version which was approved by the Committee was a revised version. This conclusion is inevitable from the correspondence. On 23rd May 1991 Mr Spence wrote to Mr Mitchell of the Department of Tourism, referring to their meeting on the previous day and stating that the developer's legal representative would contact Mr Savage, the Chief Executive, to see whether alternative wording could be formulated.⁶⁷ Also on 23rd May 1991 the developer's legal representative wrote to Mr Savage referring to a discussion earlier that day in respect of an amended Schedule, enclosing the amendment and asking for it to be substituted for that submitted by Mr Spence, for consideration by the Planning Committee on the following day.⁶⁸ This obviously actions Mr Spence's letter of 23rd May 1991. The legal representative's letter actually refers to Schedule 3 rather than 2, but presumably this is a typographical error as there does not appear to be a Schedule 3. On 28th May 1991 Mr Savage wrote to Mr Spence saying that the revised version of the draft Agreement had been agreed with the developer's legal representative and approved by the Committee. A copy endorsed by Mr Savage had been sent, said Mr Savage, to the legal representatives. We have had sight of a copy of this document⁶⁹ which confirms that it was the revised version which was approved (as written). It was signed on 24th May 1991.

3.54 The revised version signed by Mr Savage differs in paragraph 3 from the wording identified above and, so far as relevant, states: "(3) the use of the Scheduled Property is in accordance with the principles laid out in the Buyer's Guide". The boxed footnote on the same page is signed by Mr Savage and states: "This draft Agreement is hereby approved by the Department of Local Government and the Environment Planning Committee under the terms of the Planning Approval No. 90/1842 and the documents submitted with the Planning Application, being the Buyer's Guide and Villa Owners Rental Agreement. Specifically, the use at paragraph (3) of the Second Schedule above is confirmed as being permitted notwithstanding Conditions 5 and 6 of the said Approval."⁷⁰

⁶⁶ Mr Faragher Q8 Transcript Day 8 page 111; Mr Cretney Q22 Transcript Day 17 page 20

⁶⁷ File A page 63

⁶⁸ Black file page 49

⁶⁹ Document E3

⁷⁰ Document E3

- 3.55 This amendment has the same effect as the superseded version but it does not say so in the very clear terms of the superseded version. It appears to us that this carefully thought out change was made to avoid the off chance that a member of the Committee might ask to look at the document and be instantly alerted to the true position.
- 3.56 Nevertheless we are satisfied that the Committee was alive to what was, in reality, happening. The minute of that meeting of 24th May 1991 states that “Mr W B Vannan reported on an exchange of correspondence between the developer and the Department’s Chief Executive concerning the draft Agreement for Sale for the “tourist accommodation” which reflected the evidence contained in the planning application, as submitted. Upon being assured that the building operations would be phased so that the hotel and ancillary tourist accommodation would be substantially completed prior to the erection of the tourist houses the Committee accepted the wording contained in the draft Agreement for Sale”.⁷¹ This minute is obscure because it does not reveal the all important fact that the Committee was agreeing to the use of the houses at Mount Murray as permanent residences notwithstanding that condition numbers 5 and 6 of the planning permission restricted the use to tourist use.⁷² However, we were provided with a book which is entitled “Planning Committee Meeting Book 5.4.91 – 17.1.92”. This is a book which the Planning Committee Secretary used to hold records of items of business and discussions which records are pasted into the book.⁷³ It is not a public book (nor indeed were minutes at that time) but appears to be a record and memoir for the Secretary.⁷⁴ Pasted into this book is a piece of paper⁷⁵ which records, in handwriting, some items of business from the Planning Committee meeting of 24th May 1991. There are four numbered items and a fifth, unnumbered, item. The structure of the information appears to be that the description of the items of business is on the left hand side of the page, and the Committee decision is on the right hand side. Mr C C Magee, Planning Committee Secretary 1986/1991, told us that he would have written the left hand column before the meeting.⁷⁶ The last entry, as written, reads as follows:

<p>“Radcon – Mount Murray Phasing – Hotel 1st – Substantially complete Draft Agreement for Sale - OK with Chief Exec save Schedule re use: buyer’s guide EFFECTIVELY PURCHASING HOUSE</p>	<p>ACCEPT SUSPICIOUSLY Suggest alternative name Manx Connotation</p>
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- 3.57 This minute supports our finding that the Committee approved the revised version. Further reasonable interpretation of this document might suggest that the Committee were advised of the true effect of Schedule 2 of the draft Agreement for Sale, that it permitted permanent residential use, and likewise the effect of the Buyer’s Guide. We cannot be sure that this is the true interpretation and so would not wish to make any finding to this effect, but we can conclude that at least from their own perceptions of the circumstances the Committee members were aware of the true effect, and yet they approved it, apparently with some element of concern about the decision they were making. We asked Mr Magee to give his understanding of the meaning of this

⁷¹ File A pages 65 to 66

⁷² File A page 54

⁷³ Evidence of Mr Magee Q14 Transcript Day 11 page 25

⁷⁴ Mr Magee Q14 Letter 10.10.2002

⁷⁵ Annex 5 Extract from Planning Committee Book 5.4.91 – 17.1.92 File F3

⁷⁶ Mr Magee Q14 Letter 10.10.2002

minute.⁷⁷ We first asked him to give his views on the following: “The use of the words ‘accept suspiciously’ and ‘effectively purchasing house’ which appear to indicate a clear recognition that approval of the Agreement would lead to permanent residential accommodation. Why, in the circumstances, did the Committee give such approval, and based on what advice?” Mr Magee replied⁷⁸ that he could not argue with the first sentence of this question. He added the qualification that he believed the tourist use limitation condition was the governing factor, but accepted that reliance on that condition was naive. He did not think that Mr Vannan had actually used the words “effectively purchasing house” but thought the Committee would have relied on the tourist limitation condition. In reply to further questions from us Mr Magee informed us that the words “accept suspiciously” meant that the Committee were not completely satisfied with the report they had received from Mr Vannan. He further replied that he could not explain Mr Savage’s apparent misgivings seen in the minutes. We too find this difficult given Mr Savage’s clear involvement with the wording of the revised Agreement for Sale.

- 3.58 What truly happened, as described by Mr P A Willers, now a Director of Mount Murray Hotel and Country Club Limited (hereinafter referred to as Mount Murray Country Club), in a letter to Mr Vannan dated 12th June 1997,⁷⁹ “was to further set in stone that occupation in accordance [with] the Buyer’s Guide was in compliance with the planning permission...”

viii) The First Full Application for Housing

- 3.59 On the 26th July 1991⁸⁰ and the 1st August 1991⁸¹ the applicant submitted full applications for the motel and facilities buildings at Mount Murray. These are referred to further at sub-section (ix) below.
- 3.60 On the 23rd August 1991⁸² the applicant submitted a full application, PA 91/0953, for the development of 150 house sites, roads and drainage.
- 3.61 On the 30th August 1991 the planning office gave notice in the local press of application PA 91/0953 as “Development of 150 dwelling sites with associated roads, drainage and landscaping, Alex Inn Site, Mount Murray”.⁸³ There was no mention of tourist use. A dwelling house is defined in the 1982 Development Plan Order as a “house designed for use as a dwelling for a single family together with such outbuildings as are ordinarily used therewith.”
- 3.62 On the 11th September 1991 Mr and Mrs R L Mrs Reeves, local residents, wrote to the Secretary of the Planning Committee raising a number of points about the proposals. Amongst the points Mr and Mrs Reeves raised was the question as to whether these 150 houses would simply be private dwellings. So, for the second time, the true nature of the intended use was raised by local residents at an early stage and before formal consent for permanent residential use was given.⁸⁴

⁷⁷ Letter 8.10.2002 to Mr Magee Q14

⁷⁸ Mr Magee Q14 letter 10.10.2002

⁷⁹ File A page 187

⁸⁰ PA 91/0753 File F13

⁸¹ PA 91/0859 File F14

⁸² PA 91/0953 File F16

⁸³ M15 IOM Courier 30.8.1991

⁸⁴ Document Q29 Appendix 1 page 5

- 3.63 On the 13th September 1991 the Planning Committee gave approval to this last mentioned application subject to compliance with conditions or modifications. The decision notice was issued on the 2nd October 1991.⁸⁵ Some of the conditions or modifications have particular interest for the Commission. At condition number 5 the limitation to tourist use only was continued with permanent occupation of the buildings being expressly not permitted, as before. Condition number 6 related to the detailed sewage treatment and disposal requirements and this was as in earlier conditions with final details to be submitted and approved by the Committee prior to the commencement of any development. This has been referred to in paragraph 3.42 above. Condition number 4 was a new condition. It stated that the approval was based upon thirteen submitted specified house types with it being necessary for the specific location of each type of house to be agreed with the relevant officer.
- 3.64 The applicant was instantly dissatisfied with these conditions and sent a letter by fax to the Planning Committee on the same day, the 2nd October 1991. A review was requested in respect of this application and in respect of one of the applications referred to in the first paragraph of this sub-section. We do not need to refer to the latter further at this stage.
- 3.65 The request for review of the decision on the full application for the 150 house sites (PA 91/0953) was concerned with conditions number 4, 5, 6 and another condition which we need not consider at this point.⁸⁶ In respect of condition number 4 reference was made by the applicant to the letter which accompanied the planning application on the 23rd August 1991. It was stated that the approval of the variety of units, that is the facility of changing within the family of house types, was to allow the applicant's sales team to offer flexibility of choice. It went on to say that they were sure that this was what the Committee had intended and proceeded to set out a wording for the condition which they wished to have. 25 different house types were identified and the condition went on to include the sentence: "The 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". With regard to condition number 5, the tourism only condition, it was stated: "As previously agreed, this condition should read as follows:- the proposed buildings may be used in accordance with the principles laid out in the Buyer's Guide". In respect of condition number 6 the change which was requested was that there should be an amendment so that the details of sewage treatment and disposal, the final details, had to be submitted and approved by the Committee prior to the commencement of any works under the condition itself, rather than prior to the commencement of the development as a whole. In the event, these suggested changes were accepted with minor changes which are of no significance for our consideration of these matters.
- 3.66 The changes were approved by the Committee on the 4th October 1991, only two days after the issue of the decision of the Committee which had granted consent on the 13th September 1991. The effect of these changes is considerable. So far as condition number 4 is concerned the practical effect is that a given number of house types may be constructed anywhere on a particular house site without reference back to the planning authority.⁸⁷ The change to condition number 5 formalised in planning approval the acceptance in reality of usage for permanent residential occupation development explained in paragraph 3.52 and following paragraphs

⁸⁵ File A page 93

⁸⁶ File A pages 97 and 98

⁸⁷ Mr Willers Q2 Transcript Day 7 pages 46 & 47; Mr Jackson Q7 Transcript Day 8 pages 64-65; Mr Sinden Q12 Transcript Day 10 pages 69 & 70; Miss Corlett Q13 Transcript Day 10 pages 123 & 124 ; Mr Vannan Q32 Transcript Day 20 pages 79-81

above. The change to condition number 6 meant that the developer could put much greater pressure on the planning authority to agree the sewage treatment details submitted in that they could be in a position that the development as a whole had been substantially built before those details were submitted, rather than in the situation where those details were submitted before the development began at all.⁸⁸

3.67 The way in which the Committee accepted these changes on the 4th October 1991 is not easily understood from the documentation which refers to the consideration of these changes. First there are the minutes of the Committee meeting of the 4th October 1991.⁸⁹ The relevant minute refers to Mr Vannan reporting to the Committee the review request which had been submitted by the applicant in respect of the terminology employed within certain of the conditions of approval granted in respect of these planning applications. Reasoning is not set out and there is no given indication that the changes were, in reality, changes of much substance, far beyond changes in terminology. In respect of condition number 5 it was said: "It was agreed that the terminology expressed within the Buyer's Guide, submitted as a part of the planning application, should be the criteria pertaining to interpretation of internal 'tourist use'". Even less information is to be found in the Planning Committee Meeting Book. It appears from this that the item was not an item on the agenda. In respect of drainage it said: "No occupancy until agreed with DHPP". In respect of occupancy it said: "Already agreed to abide by the Buyer's Guide".⁹⁰ It is interesting to note that the drainage condition was not, in the issued notice, as summarised in the Planning Committee Meeting Book. The condition was put in the terms asked for by the applicant in his letter of the 2nd October 1991 (see paragraph 3.65 above). A decision notice was issued on the same day as the Committee meeting and we were told that this itself was unusual.⁹¹

3.68 There is another matter which we find is material in the context of setting the background and flavour of events at that time. On the 28th August 1991 Braddan Parish Commissioners wrote to the Planning Committee in respect of the planning application to develop the first phase of the resort including the hotel.⁹² The Commissioners expressed concern about foul sewage and storm water disposals and asked that the application be deferred. On the 27th September 1991 the Clerk to the Commissioners wrote to the Department of Highways, Ports and Properties indicating that the Commissioners wished to appoint that department as agents for the Commissioners in dealing with all drainage matters (foul and storm) in relation to that development of the Mount Murray site. That letter also said that the review hearing requested by the Commissioners had been withdrawn. The intimation in that letter concerning the department becoming the agent of the Commissioners was confirmed by a fax from the Department of Highways, Ports and Properties dated 27th September 1991.⁹³ We heard evidence from the minister and Chief Executive of the Department of Highways, Ports and Properties at that time. Both said that they had not known of any other instance where such an agency had taken place.⁹⁴ They also both gave evidence to the effect that neither of them were aware that that appointment and acceptance of agency had occurred, whether informally or otherwise. However, after giving evidence to us, the minister did look further into the

⁸⁸ Mr Winstanley Q39 Transcript Day 19 page 56; Mr Teare Q41 Transcript Day 19 page 92

⁸⁹ File A pages 103 and 105

⁹⁰ Annex 5 File Extract from Planning Committee Book 5.4.91 to 17.1.92 entry for 4th October item number 31 File F3

⁹¹ Mr Sinden Q12 Transcript Day 10 page 61 and Mr Killip Q15 Transcript Day 18 page 71

⁹² Document C47, page 450

⁹³ Document C47, page 449

⁹⁴ Transcript Day 28 Transcript Day 28 Cooil Q38 pages 7 & 8 and Callin Q51 page 34

matter and helpfully wrote to us to confirm that there had been discussions on the possibility of such an agreement between an officer of his department and the Clerk to the Braddan Commissioners but that the Attorney General later advised that such an agreement would not be lawful.⁹⁵

- 3.69 Mr A Teare, Senior Assistant Drainage Engineer in 1991, and Mr C Quaggin, then Drainage Engineer in the Department of Highways, Ports and Properties in 1991, both responded helpfully to our written queries on this matter.⁹⁶ Their recollections are that a formal agreement was not drawn up; because of technical implications and the need for experience and resources to act as a drainage authority there were discussions between the department and the Commissioners; and that the idea of agency developed during these discussions, the department having already been involved in the drainage planning of the site.
- 3.70 We also wrote, asking for information on these matters, to Dr J R Orme who was the member appointed by the minister to look after drainage matters. Dr Orme lives in London; he replied that he could remember nothing about the matters we raised with him.
- 3.71 Mr C S Lewin, Clerk to the Braddan Commissioners, gave evidence to us that there was pressure from the Department of Tourism that the subject matter of this objection be resolved.⁹⁷ Mr Mitchell of that department said of this matter, we were told,⁹⁸ that he would “arrange for heads to be banged together” and that if he could not sort it out “... then the Minister will come to bang heads together.”
- 3.72 So again there appeared in this background history a unique event which helped to clear the way for the Mount Murray development to proceed. It happened very quickly, from beginning to end in one month only, and so far as their evidence is concerned, without the knowledge of the minister or his Chief Executive. This appears surprising given the cost implications for the department of such agency and the unique nature of the transaction.⁹⁹ These two witnesses informed us that there were monthly meetings within the department in which material matters were mentioned and discussed but this particular proposal and agreement did not surface at any such meeting. Oddly they both said they would not have expected it to be reported, notwithstanding the additional responsibility and cost it imposed on the department, (“a considerable onus” said Mr N R Cooil, then Chief Executive, Department of Transport,¹⁰⁰) as well as the unique nature of the transaction.¹⁰¹ We obtained from the Department of Transport copy minutes of relevant meetings between 23rd September 1991 and February 1993 concerning drainage.¹⁰² These were meetings of such groups as a Sewage and Drainage Working Party, and a Drainage Client Group as well as a department meeting. These minutes are marked as confidential but it can be noted that at a departmental meeting on 30th October it is minuted that the Braddan Commissioners had accepted that the Department of Highways, Ports and Properties should continue to act on drainage matters in Braddan, with the situation to be formalised. This appears to confirm that there was indeed an informal agency in place. On 9th November 1992 another meeting notes

⁹⁵ Mr Callin Q51 letter 8.10.02

⁹⁶ Mr Teare Q41 letter 14.10.02 and Mr C Quaggin letter 15.10.02

⁹⁷ Evidence of Mr Lewin Q33 Transcript Day 22 pages 44-46, 67, 68, 74, 75

⁹⁸ Evidence of Mr Lewin Q33 Transcript Day 22 pages 45

⁹⁹ Evidence of Mr Cooil Q38 Transcript Day 28 pages 8 & 25

¹⁰⁰ Evidence of Mr Cooil Q38 Transcript Day 28 page 8

¹⁰¹ Evidence of Mr Cooil Q38 Transcript Day 28 pages 8 & 25

¹⁰² Document E1 (Confidential)

that the Commissioners had asked for a written agreement from the department to act as their agents for the next three years. It was not until 1993 that legal advice was received that there was not power for the department to enter into such agency.

- 3.73 Thus, whatever the details of the recollection and documents may be as to its origin, we consider, from the evidence and the documents, that there was an agency arrangement which came into being after pressure was applied by the Department of Tourism and which forestalled the Commissioners' objection to the application for development of the first phase of the resort.
- 3.74 So we have reached the stage where the applicant now has the full permission which it sought in its application from the start but it has reached that position in an incremental way and with a number of unusual features occurring along the route to that position. We will discuss these later.

ix) Construction of Hotel, Golf Course and Tourism Facilities 1991 to 1994

- 3.75 Following the approval in principle (on application PA 90/1842) there were four directly consequential full applications; for 150 houses plus ancillary matters (PA 91/0953)¹⁰³ which has already been referred to above, for the motel and ancillary matters, dated 26th July 1991 (PA 91/0753),¹⁰⁴ for the motel, facilities building (which was a comprehensive building, including reception, dining and bars, functions rooms, a fitness centre, leisure facilities and administration office) dated the 1st August 1991 (PA 91/0859),¹⁰⁵ and for revision to the already approved layout by the provision of (25) additional house sites and two suite apartment types and associated works, dated 8th May 1992 (PA 92/0212).¹⁰⁶
- 3.76 Additionally there was approval in principle for expansion of the resort village to include a golf course with associated facilities, granted on 8th April 1992 (PA 91/4133).¹⁰⁷ Consequential on this approval in principle detailed approval was given to an application for the layout of an 18 hole golf course and car parking 29th May 1992 (PA 92/0130).¹⁰⁸
- 3.77 The construction of the hotel, the golf course and the tourism facilities proceeded and they were regarded as phases 1 and 2 of the development at Mount Murray. It is not necessary as part of this background section to go into the same degree of detail as has been gone into in relation to the housing elements so far. It is on the housing elements that the focus of irregularities lies. There is, however, one point in relation to the golf course which is appropriate to draw to attention. This can be noted from a letter to the planning office which came from the then Chief Secretary, Mr J F Kissack, on the 27th January 1993 responding to a local resident's concerns and which asked about application PA 92/0585¹⁰⁹ – layout of golf tees, greens and fairways – which had, as Mr Savage put it: "jumped the gun".¹¹⁰ The Chief Architect and Planning Officer, Mr Watson, replied to this on the 19th February 1993 saying that he had become aware of the extensions to the golf course when they were virtually completed. He said that he personally had then inspected the site. He had

¹⁰³ PA 91/0953 File F16

¹⁰⁴ PA 91/0753 File F13

¹⁰⁵ PA 91/0859 File F14

¹⁰⁶ File A pages 109 to 112

¹⁰⁷ PA 91/4133 File F42

¹⁰⁸ PA 92/0130 File F43

¹⁰⁹ PA 92/0585 File F23

¹¹⁰ Letter Savage to Kissack 21.1.93

then asked the site agent to submit a planning application, he seeing no point in recommending to the Planning Committee that a stop notice be issued in view of the advanced nature of the work and that it would in any event be a simple matter to restore the offending development should planning permission be refused.

- 3.78 The constructions of the hotel, the golf course and the tourism facilities were completed during the early part of the 1990s, although applications continued for extensions or alterations. There is little that is worthy of note for this background account in that regard.

x) Construction of Houses from 1994 and their Occupation

- 3.79 We start by referring back to application PA 92/0212 which sought an extension to a total of 175 houses. This is because the letter from Mr Spence which accompanied the application, dated 8th May 1992,¹¹¹ made a reference to Radisson Hotels. This reference is material because the belief that Radisson, part of the Carlson Group in the USA, supported the Mount Murray Village Resort project was instrumental in bringing government support to the project. The letter from Mr Spence said that what the developer believed ensured the success of the scheme was that they had reached agreement with Radisson Hotels to operate the hotel and to provide management services for the villa owners, in accordance with the Buyer's Guide. The letter then set out the points which follow. All the changes were said to have been made at the request of Radisson. Their continuing market research, it was said, had led to the upgrading of the Mount Murray project, and it was also at Radisson's insistence that the applicant/developer acquired the land for the golf course.

- 3.80 Mr Spence went on to say that, having obtained the approval in principle for golf, Radisson had updated its occupancy projection and asked the applicant/developer to build a further 50 large villas on the golf course for anticipated parties of golfers. Mr Spence said that this had been turned down insofar as development had to be within the area covered by the original approvals and that the golf course could not be encroached on. This had been accepted and revised layouts had been prepared (for 25 houses only). That went only about half way to meeting Radisson's requirement but they [Radisson] had agreed, provided this proposal was approved, that they would immediately sign the agreement with the developer. He [the developer] in turn had agreed with Radisson that construction work would commence in June of 1992, and that summer 1993 had been targeted for the opening date. A little further on Mr Spence went on: "Again, as a result of Radisson's research, we have submitted a proposal for the inclusion in the previously approved family of house types two types of luxury suite apartment buildings. The inclusion of this element enables Radisson to cater to the full spectrum of potential customers and to offer a comprehensive range of accommodation." The impression given is that Radisson is a driving force behind the development.

- 3.81 There is no doubt that the claimed involvement of Radisson added considerable force to the credibility of the Mount Murray development from the tourism perspective, and that it was a factor in the Department of Tourism's support for the proposal.¹¹²

- 3.82 We have had considerable assistance on this matter from Mr Darwin Klockers, Vice President, Contract Administration, Carlson Hospitality Worldwide. Radisson is part

¹¹¹ File A pages 116 to 120

¹¹² Evidence of Mr Bell Q9 Transcript Day 9 pages 5 and 6

of the Carlson group of companies. It is clear from what Mr Klockers told us and from the documents which he sent to us¹¹³ that Radisson were involved.

- 3.83 From this material we see that Radisson Hotels International Inc was in discussions with Mr Spence of Spence Realty Limited, referred to at paragraph 3.37 above, with respect to entering into a management agreement with that company, which would allow Spence Realty to operate a proposed 90 room, 50 villa hotel as the Radisson Hotel at the Mount Murray Country Club. During this period, Radisson employees communicated and met both on the Island and in the United States with representatives of the Department of Tourism. These meetings were to make the Department of Tourism aware of Radisson's involvement as a potential management company and to discuss whether the department could assist in the pre-opening process by making additional marketing funds available to create awareness of the hotel and additional demand. Mr Klockers told us that, based on the files, the meeting in the United States (in Minneapolis) took place in early March 1992 and the meeting on the Isle of Man took place on 17th December 1992.
- 3.84 It appears that the department was unable to provide those requested marketing funds. In addition, the developer itself was not prepared to put up such 'pre-opening' funds to enable sufficient marketing to be done. As a consequence Radisson withdrew as a management candidate in order to avoid being in a position of not being able to meet the owner's expectations. However, Radisson agreed to enter into a licence agreement so that the hotel could carry the "Radisson" name, be in the Radisson reservation system and receive sales, marketing, public relations and other general benefits associated with the brand.
- 3.85 The licence agreement was signed with Radcon and is dated 25 February 1993. After delays in the anticipated opening date, and disagreements over what benefits and services the hotel was to receive by being part of the Radisson system, the parties agreed to terminate the licence agreement with effect from 31st January 1995.
- 3.86 So notwithstanding that Mr Willers told us¹¹⁴ that agreement had not been entered into with Radisson, we are satisfied that there was such an agreement in the circumstances we have just outlined. We also find it understandable that Mount Murray Country Club should register Radisson as a business name on the foot of a then present intention for Radisson to manage the hotel, as Mr Willers explained to us.¹¹⁵ Whether Radisson did indeed impose the requirements which we have referred to in paragraph 3.73 above is not clarified, but there is not inconsistency between Mr Spence's claims and the information which we have from Radisson.
- 3.87 The application (PA 92/0212 – the extension to a total of 175 houses) was approved on the 29th May 1992,¹¹⁶ and although that approval went to review it was confirmed on the 30th October 1992¹¹⁷ without change to the conditions. Condition number 4 to this approval is complicated. It does allow additional suite apartment types P and Q, though no commitment is implied to their design. It also indicates that a number of house types have been approved for each site. Particularly, because this does have significance later, it states that no commitment is implied to the location of the four sites marked in red on drawing number 16C which are located in the south eastern part of the site. It says they may be relocated elsewhere within the area allowed for

¹¹³ Document E2

¹¹⁴ Evidence of Mr Willers Q2 Transcript Day 7 page 66

¹¹⁵ Letter Mr Willers 11.10.2002

¹¹⁶ File A page 131

¹¹⁷ PA 92/0212 File F18

sites and thus form the subject of an amended plan to be submitted and agreed with the Architect and Planning Officer.

- 3.88 At this time it was, as earlier indicated in paragraph 3.5 above, normal practice in the Isle of Man for planning approvals for development to be required to be completed within four years from the time of approval. This meant that the original approval of the 4th October 1991 for 150 sites would expire on the 3rd October 1995 and that the 25 house extension approval just referred to would expire on the 4th June 1996. It was in relation to this situation that on the 1st August 1994¹¹⁸ Mr Spence wrote a long letter to the Minister for Local Government and the Environment, Mr Brown. It was a particularly helpful letter in the present context in the sense that it sets out how the development was at that time proceeding and was proposed to proceed.
- 3.89 The letter pointed out that the housing development was the third phase of the Mount Murray project, a very great deal of which had already been carried out. It was explained that it was, therefore, not until May of 1994 that the development company could give detailed consideration to the financing and execution of the residential phase of the development. At that stage detailed infrastructure was almost complete and in place. As Mr Spence put it, by May of 1994, the developer had made enormous progress in the execution of phases 1 and 2 of the development, that is the hotel, leisure and golf course aspects. But the residential housing phase could not be marketed before the first two phases were complete and the services infrastructure constructed. In May of 1994 it was said to be apparent to the developer that the proper financing and development of the 175 residential units would need at least an additional four years to complete the project.
- 3.90 We heard evidence from Mrs S Palmer.¹¹⁹ She told us that she was, in April 1996, appointed by the manager of the Mount Murray Country Club to set up and open a sales office and start selling houses and plots for building on the Mount Murray estate. At that date, she said, there were eight large show houses constructed around the golf course fairway in different styles. Those eight houses, therefore, must have been built between August 1994 and April 1996. Mrs Palmer told us that potential buyers could choose the style of house they liked and could choose the plot on which they would like it to be built. She was not instructed to sell any of the houses as tourist accommodation. We also heard from Mrs T Gough¹²⁰ who had worked in the Sales Office with Mrs Palmer at that time and her evidence was quite consistent with that of Mrs Palmer. At the present time the estate development of houses is substantially complete and we have no evidence that any of the houses are occupied for tourism purposes; indeed the evidence which we have is to the contrary, and it appears that they are all permanent residences.¹²¹ The Commission sought to verify this with Mr Willers of Mount Murray Country Club but he declined to answer.¹²²
- 3.91 The housing development progress can be continued from the evidence of Mr and Mrs N Vakil¹²³ who purchased premises in the development on Murrays Lake Drive in November 1996. In their evidence to us Mr and Mrs Vakil explained that, at the time of their purchase, there were 24 show houses, 9 in what is described as The Village

¹¹⁸ File A page 147

¹¹⁹ Evidence of Mrs Palmer Document Q45 and Transcript Day 21 pages 57-73

¹²⁰ Evidence of Mrs Gough Document Q53 and Transcript Day 28 pages 43-57

¹²¹ Evidence of Mr Vakil Q28 Transcript Day 14 pages 38 & 39 and Mr Toohey Q10 Transcript Day 30 page 35

¹²² Evidence of Mr Willers Q2 Transcript Day 7 pages 69-70

¹²³ Mr Vakil Documents Q28 and WS6

which is quite close to the hotel, and the remainder around the last hole of the golf course. They explained that Mount Murray Homes Limited closed their offices around December 1997, and in July 1998 another office opened in the same premises with a new developer, J G Kelly Homes Limited, carrying on the remaining construction. At that time there appeared to have been nine original residences as Mr and Mrs Vakil described them.

- 3.92 Mr J H Jackson, Chairman of J G Kelly Homes Limited, gave evidence to us.¹²⁴ He explained fully his company's involvement on the site. This involvement had started in April 1997 when his company were approached to see if they would be interested in purchasing some or all of the development land. At that time planning approvals had been partly implemented with the construction and installation of all of the roads and services and a number of show houses built. The involvement of his company was limited to the construction of smaller, mainly semi-detached and terraced housing to the south east of the site originally referred to as The Village (see last preceding paragraph). His company had no involvement in the houses which were in woodlands or around the 18th fairway. There was a lull in negotiations but the company purchased the site in early June 1998. At that time Mr Jackson said that nine of the properties within his area of the site had been constructed by the vendor and those had been sold directly to the individual purchasers by the vendor. These were no doubt the houses which Mr and Mrs Vakil had described as the nine original residences. Mr Jackson explained that the majority of the construction work carried out by his company was done in the six or eight months following purchase.
- 3.93 Mr Vakil told us about a matter which had particularly concerned him, and that was a development of four houses which appeared to divert from the approved continuation of Murrays Lake Drive so that they were re-aligned at right angles to Murrays Lake Drive and so were said to impinge upon Mr and Mrs Vakil's amenity and privacy. These four houses were on a road that came to be known as Murrays Lake Grove. Mr Jackson also told us about these four houses. He said that when his company purchased the site the roads had been installed and, in particular, that the spur road now known as Murrays Lake Grove had been installed and was in the position where the four houses are now built. His company understood that there was planning permission for the development and construction of those four houses.
- 3.94 Mr and Mrs Vakil and their neighbours continued to be worried about the events which were occurring on the estate, especially about the four houses on Murrays Lake Grove. They eventually got in touch with their local MHK, Mr D J Gelling (now MLC), who was also at the time Chief Minister. We heard evidence from Mr Gelling.¹²⁵ He said that it would be some time in 1997 to 1998 that his attention was drawn to the Mount Murray estate. Those who had already taken up residence in the original housing at Mount Murray had become annoyed because the development was not as they expected nor as they believed had been intended by the planners. He said that from this time on he received many complaints, both as the constituency Member and as Chief Minister, from people who were observing the Mount Murray development and complaining that it was not as they felt that the planning consent had been granted. He said that he made numerous enquiries to the Director of Planning who assured him that everything was in order and that everything that was happening on the site was fully within the planning consent given.
- 3.95 Mr Gelling told us that he was concerned and that he asked that an enquiry within the department be made. He was informed again, he said, that everything regarding the

¹²⁴ Mr Jackson Document Q7

¹²⁵ Mr Gelling Document Q23 and Transcript Day 21 pages 1-35

site was in order as per the planning consent. Mr Gelling stated that he became more concerned when large, mature trees were being felled and in particular, one large tree which came down across the main Castletown to Douglas Road, the A5. This brought to the attention of many members of the public the fact that trees were being felled on the site. He made further investigations and was becoming more concerned. He requested his colleagues in the Council of Ministers that an Inquiry should take place in respect of what had been expected and what was now being provided. This request was accepted and Professor Crow was appointed on 18th August 2000 and he reported to the Council of Ministers on the 30th December 2000.

- 3.96 Before turning to the Crow Report we wish to draw attention, as part of the overall context, to a meeting of the Planning Committee on the 20th June 1997.¹²⁶ At that meeting it is minuted that Mr Vannan reported that advocates acting on behalf of the site owner had sought confirmation that the planning consent covering the erection of the dwellings allowed for the properties to be sold as both tourist accommodation and permanent accommodation. It is further minuted that Mr Vannan advised the Planning Committee that by notice dated 2nd October 1991 occupation was restricted to bona fide tourists, and that by notice dated 4th October 1991 the approval was altered to allow the sale of the properties in accordance with the specifications laid down in the Buyer's Guide. This effectively allowed the sale of the dwellings for permanent occupation. The minute also further stated: "The Planning Committee noted with concern the situation as outlined by Mr Vannan and reluctantly advised him to confirm that the sale of properties to permanent residents complied with planning consents."
- 3.97 Two points can be noted at this stage. The first is the clarity with which this minute conveys the message which it was intended to convey. It contrasts markedly with the obscure minute reporting the events of the 4th October 1991. The second point is that the members of the Planning Committee were of course different to those who were members in 1991. It is understandable that they were concerned and that this may have been new knowledge to them. However, as we have indicated, this information was not new within the department and its officers. What, however, is demonstrated here is that probably for the first time the true nature of the planning consent which was granted in 1991 is overtly acknowledged by the Planning Committee, and therefore generally. Nevertheless it is relevant to note that Planning Committee minutes were not open to the public, so the information may not have been so widely available in reality.

xi) The Crow Inquiry and Report

- 3.98 We have referred to this already at paragraphs 3.1 to 3.6 above. As indicated Professor Crow gave evidence before us.¹²⁷ His report is an Inquiry document¹²⁸ and as such is available for detailed consideration by anyone who is unfamiliar with it. What Professor Crow had to say, and his reasons for that, are set out in his report, and insofar as we differ from it, as we do in parts, we set out fully our own reasoning and evidence for our findings rather than by way of any detailed comparison with Professor Crow's report.
- 3.99 Nevertheless that report remains a fundamental basis for our own considerations in that we have to investigate and report on the government's handling of matters referred to in that report. Accordingly we consider it appropriate to set out here a

¹²⁶ File A page 166

¹²⁷ Evidence of Prof Crow P11 Notes Day 6 pages 1-17

¹²⁸ Document C6 Crow Report

brief analysis of the report, its findings and recommendations with particular emphasis upon indicators of irregularity.

- 3.100 Professor Crow's first chapter is his review of the planning and development history. The first, and indeed the only use of the words irregular or irregularity are in this chapter at paragraph 1.26 where he characterises the issue on 4th October 1991 of a second varied decision notice upon the same application as highly irregular. Nevertheless there are many other actions and events which he reports which are irregular actions or events. Many of them are related directly or indirectly to the decision issued on 4th October 1991, in matters leading up to it or following from it. In paragraph 1.18 Professor Crow refers to a letter written by planning officials on 13th May 1991 as "manifestly untrue". Paragraph 1.27 refers to a view that the Planning Committee had been "kept in the dark" about permanent residential use. Paragraph 1.29 refers to a planning decision "so hurried" that it was at the expense of proper consideration of drainage matters, the views of the Chief Fire Officer, and the fate of trees. Paragraph 1.31 refers to a layout which was not suitable for permanent residential accommodation, its consideration being "hurried" and in the hurry inadequate. Paragraph 1.42 refers to no-one at the Department of Local Government and the Environment having read the documentation of a planning application in principle fully. Paragraphs 1.46 and 1.47 refer, again, to the wrong of "concealing the residential element from the Committee" until it was too late for them to do anything substantive about it. Paragraph 1.48 refers to the Committee and government being denied the opportunity of deciding for themselves whether the price for permitting the development was a price worth paying.
- 3.101 We have drawn attention to these particular items in the report to demonstrate that it is reasonable, indeed imperative, for us to look beyond the single item specifically referred to as an irregularity, and to look at the circumstances surrounding that matter, in which circumstances irregularities were many and manifest. We have accordingly considered, in more depth than Professor Crow was able to do, those matters upon which he was asked to report, and in respect of which irregularities can be seen to have emerged. We speak further in sub-section 4 (ii) below of our interpretation of our remit in this area.
- 3.102 Before leaving Professor Crow's first chapter it is important to draw attention to his conclusion at paragraph 1.41 that he found no evidence to substantiate any charge of corruption against any of the officials concerned.
- 3.103 The second chapter of Professor Crow's report concerns the nature of the title of those who have purchased residential property. He found no problem of title. He considered a number of matters falling out from title, but they need not be mentioned further here because they have either been resolved or fall outside our remit.
- 3.104 Professor Crow's third chapter deals with infrastructure concerns, and that is a matter of interest to us as we find that there have been significant irregularities in this regard. With certain exceptions which do not concern us we report on these matters in some depth later. Insofar as matters in this third chapter do not concern us we do not refer to them here.
- 3.105 In his third chapter Professor Crow reports that expert opinion was that if it did become necessary for the relevant authority to adopt the roads not a lot would be found wrong; he referred to the justifiable concern of the Fire Service in respect of road access; he reported on the need for pedestrian access to the A5 road and pedestrian safety facilities on the A5; and he reported that there was no problem with surface water drainage.

- 3.106 Chapter 4 of his report is entitled “Planning and building regulation approvals; conditions of approval”. This chapter looks at the basic and amended pattern of planning approval. It identifies confusion in the planning office, particularly in relation to the identification of drawings. He particularly draws attention to a planning approval (PA 92/0212) which expressly denied approval to four sites in the south east corner of the development, but he concludes that four houses only had been constructed without planning approval, and that these were at Murrays Lake Grove. He further concludes that in its over-informal manner of dealing with amendments to planning approvals at Mount Murray the Department of Local Government and the Environment may have deprived people of the right to object to changes affecting them. He thought that there should be apology or compensation as appropriate from this department. Professor Crow also considered the issue of observance of conditions and identifies the difficulty, if not impossible problem, of control consequential upon a condition which allowed a freedom to site houses anywhere on a building site, especially with regard to the effect on tree preservation. Finally, it is pointed out that before 1993 fire appliance access was not a building regulation consideration.
- 3.107 Professor Crow’s final chapter contains his recommendations. It appears that he makes eleven formal recommendations with supplemental suggestions within those formal recommendations. Insofar as it is appropriate to do so, we comment on these, and the extent of their implementation, in sections 15 and 19 below.
- 3.108 As already stated the Crow Report did not allay all public concerns.¹²⁹ In proposing the vote in Tynwald on the 19th February 2002¹³⁰ Mr P Karran MHK, who twice appeared before us, and produced considerable evidence to us, stated that this was “a story about a planning application by someone who, in short order, managed to take the reins of government out of the hands of two ministers, then bullied and scorned officials in two departments to do his will and by a series of con tricks – con tricks, hon. members – was able to utterly confound the planning rules and the laws of this Island, this country. ...this is an example of what happens when executive government has allowed all good sense to be crushed underfoot in the reckless pursuit of something they think is of benefit.” We have been given by the authority of Tynwald the resources and the ability to pursue deeply and thoroughly these issues of proper concern and we trust that this Part One Report will finally satisfy everyone that the true situation so far as that is possible within its parameters has been determined and reported upon by the Commission.

xii) Summary

- 3.109 The application of the 16th January 1991 was clearly intended to seek permission for permanent residential development in land more than half of which was designated as an area of high landscape value and scenic significance, the remainder being zoned as an area for tourist accommodation in parkland.¹³¹ Such land is land which “shall be reserved and safeguarded”,¹³² although clearly it could be developed if circumstances do require that.¹³³ The Planning Committee’s initial decisions indicated that it wished to restrict site development to tourism activity and construction related to that. It allowed this to be changed in an incremental and

¹²⁹ Paragraph 3.2 above

¹³⁰ Document C2 Hansard 19.2.2002 T522 right hand column

¹³¹ File A page 52

¹³² 1982 Development Order Article 7

¹³³ 1982 Development Order Article 11

obscure manner which allowed permanent residential development as well as tourism rental units, contrary to the zoning and designation of the statutory Development Plan, on the 4th October 1991 having effectively approved this situation on the 24th May 1991. The Planning Committee claim not to have known the effect of their decisions. Examination of the position did not take place until 2000. The Crow Report indicated that falsehood and irregularities were part of the history of events.

3.110 It is emphasised that this section is very much a broad background which is set out as a starting point for the understanding of what we report which, following a wide and detailed examination of witnesses and documents, identifies a most complex situation which revealed far more than falsehoods and irregularities.

End of Section 3