

8. THE ISLE OF MAN PLANNING SYSTEM – THE PLANNING SYSTEM IN 1991/92

i) Introduction to Planning System Sections

- 8.1 As with the Isle of Man system of government referred to in the last section, it was evident to the Commission at an early stage in its deliberations that a clear understanding of the planning system and procedures in force on the Island in the early 1990s would be necessary if the reasons for the irregularities surrounding the development at Mount Murray were to be properly identified and explained. To that end, the Commission has obtained statements from and questioned in some detail past and present Planning Officers and administrative staff of the planning office in the Department of Local Government and the Environment together with Planning Committee chairmen and members and the ministers from time to time responsible for that department. Of these officers it can be noted that Mr Watson was Chief Architect and Planning Officer at all material times until he retired in 1993. Mr Vannan was then appointed Director of Planning, on promotion from his position as Architect/Planning Officer and he was succeeded in 2001 by Mr McCauley as Director of Planning and Building Control.
- 8.2 Irregularities and procedural shortcomings bearing on the Mount Murray decisions formed an important element of the findings of the report by Professor Crow as reflected in part of the Commission's terms of reference. As a consequence the Commission has been at pains to understand fully how the planning system and procedures have changed over the last ten or so years and what further proposals for change are under consideration. This was regarded as essential because any such changes would be a reflection of the adequacy of government's subsequent response to the Mount Murray experience and because it would inform an issue uppermost in the minds of the Commission, namely the extent to which the present and proposed processes of planning decision-making could be regarded as sufficiently robust as to prevent the subversion of the system which appeared to have taken place at Mount Murray in the early 1990s.

ii) The Planning System in 1991/1992

- 8.3 The primary legislation underpinning the town and country planning function within the Isle of Man at the time of the Mount Murray planning applications was (and in regard to development control remains) the Town and Country Planning Acts of 1934 and 1981. The former is described as being "to enable schemes to be prepared and carried into effect for development and planning of land" and in addition to defining the meaning of development, it sets out the general duties of the department (in this case meaning the Department of Local Government and the Environment, a definition inserted into the Act by Government Circular No. 192/86). The 1981 Act had a narrower focus but included provision for the holding of Special Inquiries into planning applications,¹ a matter of some importance which is referred to later in this section.
- 8.4 The 1934 Act at section 6 gives the department the power to make Orders, the most important of which, for the purposes of this report, is the Isle of Man Planning Scheme (Development Plan) Order 1982 now incorporating amendments up to the 1st April 1988 (referred to as the 1982 Order). The 1982 Order is Island-wide and provides for the reservation and safeguarding of land on the basis of a comprehensive list of zones and notations which included at section 10(b) "areas for tourist accommodation in parkland". This designation is that which applied to the 7.2

¹ Town and Country Planning Act 1981 Part I

hectares (18 acres) of land given initial permission at Mount Murray under PA 90/1842. Importantly however, the 1982 Order makes it clear at section 8 that the scheme shall be a guide to the department in its administration of development policy, implying in the Commission's view, that the extent of zones and notations should not necessarily be regarded as inviolate.

- 8.5 The 1982 Order also establishes the fundamental principle at 4 (1) (a) that development is prohibited unless approved by the department, and it sets out, in section 11, the matters to which the department should have regard when considering applications for planning approval. Local plans of which there are over 20² are not defined as such in the 1982 Order but have been prepared under section 6 of the 1934 Act and published as planning Circulars.
- 8.6 In essence therefore, the 1934 Act together with the 1982 Order and Circulars, underpin a town and country planning system which conventionally comprises a Development Plan and a related system of development control. However, procedures under which the Island's planning system operates as set out in schedule 1 to the 1982 Order reflect a number of unusual if not unique features which are material to an understanding of the events at Mount Murray. These are considered in sub-section (v) below.

iii) **The Planning Committee and its Procedures**

- 8.7 The development control functions of the department in 1991 were exercised on its behalf by a Planning Committee³ except insofar as the department could, and in practice did, delegate specified functions to the Director of Planning (in 1991 the Chief Architect and Planning Officer). The Committee itself under the 1982 Order should consist of one or more "members" of the department who were Members of Tynwald (see paragraph 7.29) and one or more other persons.⁴ The size of the Committee, either maximum or minimum, is not specified in the 1982 Order but, in practice, it consisted in 1991 of between 3 and 5 persons (usually 3) comprising the chairman who was the then department member, Mr Cretney, and the other lay members. All meetings were, as now, held in private and minutes of such meetings were not made publicly available other than on request. As discussed in section 17 below the minutes themselves, at least those relating to Mount Murray matters, tended to be obscure as to their meaning. The Committee was appointed by the minister representing the department, not elected, a process which, on the evidence received by the Commission appeared to consist mainly of an informal process of personal invitation by the chairman. Mr Guard, for example, stated in evidence that "he [Mr Cretney] was put in charge of planning and asked to invite at his discretion the lay members to serve with him." He added however that "it was ultimately his [the minister's] decision that I be appointed."⁵
- 8.8 It would appear to the Commission that only the most rudimentary form of induction or guidance was given to new Committee members. Reference was made to a "pack"⁶ containing the "formal body of law and policy which is available for the public" but not for any advice concerning a member's role and responsibilities. (The 1982 Order makes provision for Standing Orders with respect to the proceedings of the

² Schedule of Primary Planning Legislation and related Orders, Regulations & Circulars: DOLGE: 22 July 2002 Document L7

³ 1982 Development Order: Schedule 1 paragraph 2(1)

⁴ 1982 Development Order: Schedule 1 paragraph 2(2)

⁵ Evidence of Mr Guard Q4 Transcript Day 8 page 3

⁶ Evidence of Mr Sinden Q12 Transcript Day 10 page 94

Committee but no such Standing Orders came into operation until 1997). The reliance by the Committee on the perceived technical expertise and recommendations of officers which was stressed to the Commission by many former Committee members was therefore considerable and whilst this reliance which Committee members of the time clearly placed in the officers was understandable, it appeared to have been at a level which, in the Commission's view, was not conducive to recognition by the Committee of its ultimate responsibility to understand properly the decisions it was making. Mr Cretney, Chairman of the relevant Committee in 1991, does not accept this nor that, as Chairman, he failed in his responsibility to ensure that he and the Committee understood what they were being asked to decide.⁷ He makes the point that it is not unreasonable to expect officer advice to be accurate and that timeous decisions could not be made if members are expected to question all information supplied. As put these are not unreasonable propositions, and have also been made by other Committee members, but they cannot and did not justify members making decisions which they did not understand because they failed to ask for, or query, information until they reached the position where they did understand what they were doing. As this report explains, they failed to do this. Paragraphs 19.27 and 19.28 below refer to this matter in our explanation of our recommendation with regard to the training of Committee members.

- 8.9 This relationship was not helped by certain of the Committee procedures at that time. Agendas were pre-circulated to Committee members for both initial and review meetings (see sub-section (v) below) but in the case of the former, the agenda did no more than append the (published) applications list with a very brief description, together with a list of previously deferred items. It also appeared to be common practice at the time to add later agenda items which were recorded by hand in the Committee Meeting Book⁸. It can be seen from the Meeting Books which the Commission has been able to inspect that the main applications at Mount Murray taken to Committee meetings in May, September and October 1991 and in May 1992 were all added to the agenda in this way. No written reports were provided to the Committee either before or at a meeting and such reports as were prepared by officers were used entirely as a basis for an oral presentation. In the case of Mount Murray itself, there is no evidence that even an officer's report was prepared for PA 91/0953 (the first detailed scheme for 150 dwellings) whilst none was prepared⁹ for PA 92/0212 (a further 25 dwellings).
- 8.10 This absence of procedural care was further compounded by the fact that conditions attaching to approvals (numerous in the case of Mount Murray) were often drafted outside the Committee and not formally taken back for confirmation.¹⁰ Such procedural inadequacies could hardly have encouraged the Committee to achieve a proper understanding of what was before it, particularly in the case of a complex series of applications as at Mount Murray, although that is not to say that such understanding was not readily achievable at Mount Murray had the Committee sought to read the application in a reasonable manner.
- 8.11 Other aspects of the procedures relating to the handling of planning applications in 1991 are also of importance. All initial planning applications (see below) were advertised in the local press, with 14 days being given in which objections or comments could be registered. Representation made to the Committee, either in

⁷ Annex 4

⁸ Evidence of Mr Killip Q15 Transcript Day 18 pages 84 & 85

⁹ Evidence of Miss Corlett Document Q13 paragraph 2.2

¹⁰ Evidence of Mr Cretney Q22 Transcript Day 17 page 37 and Mr Sinden Q12 Transcript Day 10 pages 25 & 26

response to press notices or statutory consultation, were collected together and placed in a parallel file to that of the application itself, and were read or summarised to the Committee by the Committee Secretary or by an Administrative Officer before it made its decision.

- 8.12 The effect of this was a separation between the Planning Officer's report and the representations and, although the representations file could theoretically be seen by a Planning Officer at any time, the evidence to the Commission indicates that reports were generally prepared without reference to the representations which, in some cases, were not known about by the Case Officer until read out at the Committee.¹¹ It is relevant to note that this feature of the system was later commented on by a Royal Town Planning Institute Report of Assessors prepared at the request of the Department of Local Government and the Environment.¹² The report held it to be "fundamental for the Planning Officer to see any representations made in connection with a planning application before the application is presented to Committee."
- 8.13 Procedures following the granting of an initial approval are referred to in sub-section (v) of this section. It is important to note here however that at paragraph 12 of schedule I to the 1982 Order, provision is made for what is described as a "variation of planning approval". This allows the department (presumably through the Committee although this is not specified in the 1982 Order) to vary the terms of any approval in respect of matters such as siting, design and external appearance and to vary total floor area by not more than 10 per cent.
- 8.14 This form of amendment without requiring a fresh planning application appears to have been in common use in 1991 albeit mainly with respect to small developments such as extensions.¹³ Self evidently this required administrative procedures to be clear and closely followed, but this was not the case with some plans having no date stamp of when received and none having a stamp following a decision. This would have been less critical with small changes but with a complex scheme as at Mount Murray involving a very large number of plans, the scope for confusion was clearly considerable.¹⁴ The result of that confusion was identified and emphasised within the report of Professor Crow.¹⁵
- 8.15 It is neither necessary nor is it the intention of this report to describe planning procedures in 1991 in any great detail save insofar as those procedures include features as referred to above likely to lead to confusion and lack of precision and therefore bearing on the irregularities at Mount Murray which the Commission has investigated. Such implications are referred to later in this section but it may be noted here that a small Committee meeting in private does not seem to the Commission to be consistent with regulating the development and use of land in the public interest.

iv) **Enforcement**

- 8.16 Enforcement arrangements were primitive, as indicated by the following brief account of the position.

¹¹ Evidence of Miss Newton Document Q36 4th page under heading "Third Party Submissions"

¹² RTPI Assessors Report Document L55

¹³ Evidence of Miss Corlett Q13 Transcript Day 10 page 102

¹⁴ Internal memorandum Corlett to Director of Planning 24.11.99

¹⁵ C6 Crow Report paragraph 4.5 & 4.6

8.17 An Enforcement Officer was appointed in May 1992 and was (and is) the only Enforcement Officer on the Island. This would be a time when implementation of the Mount Murray planning permissions would be getting under way. By his own evidence he had no understanding of the Mount Murray development¹⁶ and in the early stages he knew nothing about planning.¹⁷ He went so far as to say that “what the approval [at Mount Murray] had been for didn’t really come into it.”¹⁸ He waited for complaints to come to him and he was purely reactive.¹⁹ Indeed he was in real terms more a complaints officer than an Enforcement Officer, although he did not identify to us his terms of reference. It was not until 1998 that it became clear to him that the houses were in permanent residential occupation,²⁰ yet he told us that in 1992 his understanding of the lawful uses at Mount Murray were as golf course and hotel and holiday accommodation.²¹ He was unaware until Professor Crow reported that Murrays Lake Grove had been constructed without planning permission.

v) The System of Review, Appeals and Third Party Rights

8.18 Schedule I to the 1982 Order requires that the Committee shall, with certain very limited exceptions, make what is defined as an initial decision on every application for planning approval.²² However, the Committee may be requested to review its decision within 21 days not only by the applicant, landowner or local authority but also by any person who has made objections or representations unless it appears to the Committee that the person “has no interest or not sufficient interest in the subject matter of the decision”.²³

8.19 This third party right is an unusual feature and possibly unique to the Isle of Man so far as the Commission is aware. The right also extends to appeals to the minister which may be made by any of the same parties within 21 days following the notice of decision on review.²⁴ A report and recommended decision on an appeal is prepared by an inspector from outside the Island but it is for the minister to allow or dismiss such an appeal. An appeal can only be made where a review request has already been the subject of a Committee decision,²⁵ or where the Committee fails to determine an application within the specified time.²⁶

8.20 It is not the Commission’s view that this system was in itself a cause of the irregularities at Mount Murray. Self evidently, a review process implies that, in effect, a large proportion of applications are considered twice, which, together with third party rights, must add to pressure and demands on staff time. A review process would have also facilitated the incremental approach by the developer illustrated in section 3 above, but neither is a reason why planning decisions should be ill-judged or inadequately considered.

8.21 The position of the minister in relation to the appeal process raises more significant concerns which are considered later in sections 10, 11 and in the recommendations. It is sufficient to point out here that the minister’s quasi judicial role in respect of

¹⁶ Transcript Day 23 page 3

¹⁷ Transcript Day 23 page 13

¹⁸ Transcript Day 23 page 3

¹⁹ Transcript Day 23 page 20

²⁰ Transcript Day 23 page 7

²¹ Transcript Day 23 page 3

²² 1982 Development Order: Schedule 1 paragraph 5(1)

²³ 1982 Development Order: Schedule 1 paragraph 6(3)

²⁴ 1982 Development Order: Schedule 1 paragraph 7(1)

²⁵ 1982 Development Order: Schedule 1 paragraph 7(1)

²⁶ 1982 Development Order: Schedule 1 paragraph 5(3)

appeals means that, in practice, he or she takes no part in in deliberations concerning the merits of any planning application lest it may later be taken to appeal and the minister's position of impartiality thereby prejudiced. This arrangement derives from the advice of the Attorney General referred to in paragraph 7.41 above with which the Commission fully concurs. It was stressed as a beneficial feature of government by all ministers, past and present, by the last Chief Secretary and by the Chief Executive of the Department of Local Government and the Environment.²⁷ So far as the planning arguments for a particular case are concerned, the Commission acknowledges the circumspect position which the minister needs to take whilst also noting that this should not prevent appropriate involvement in procedures and systems, as for example the judgement as to whether a proposal should be drawn to the attention (but not necessarily be determined by) the Council of Ministers. We address the validity of this approach in paragraph 11.121 below. However, it must at least be very questionable whether the planning office is strengthened by maintaining ministerial impartiality or whether it is in fact weakened by the self imposed absence of ministerial guidance and support on sensitive applications and of a voice on such matters within government. It does not appear satisfactory to the Commission that one minister (for Tourism) could play a significant role at Mount Murray whilst the minister for the department concerned could not.

vi) Delegation, Permitted Development and Consultations

- 8.22 There does not appear to have been a formal delegation agreement to the Chief Architect and Planning Officer in existence in the early 1990s, although the 1982 Order made provision for it. Mr R A Hamilton, the Chief Executive of the Department of Local Government and the Environment, referred in his evidence²⁸ to Mr Vannan (and presumably before him, Mr Watson) having limited powers to approve but not to refuse applications and, even with the former, being required to advise the Committee of intended decisions before they were issued. We refer to this again in paragraph 10.5 below in connection with pressure on staff resources.
- 8.23 At the same time the Permitted Development Order (Government Circular No. 171/83)²⁹ prepared under section 3A (3) of the 1934 Act was extremely limited in its extent. It referred primarily to fences, garages and other structures within a dwelling curtilage and did not cover the extensions and other alterations to dwellings themselves which were at the core of the then equivalent Orders in other jurisdictions such as in England and Wales, the General Development Order 1988 and the Use Classes Order 1987. Here the scope of permitted development under the successor instrument, the Town and Country Planning (General Permitted Development) Order 1995, has become further extended.
- 8.24 These limitations in both delegation and permitted development would, in the Commission's view, have served to reinforce the pressure on the professional staffing level of the planning office which we have already referred to at paragraph 8.20 above.
- 8.25 With respect to consultation at the time of the Mount Murray applications the local authorities and the Department of Highways, Ports and Properties were automatically consulted on all applications received by the Department of Local Government and the Environment. There appears to be no statutory basis for this in either the 1934 Act or the 1982 Order although there was no doubt so far as any of the parties are

²⁷ Evidence of Mr Hamilton P10 Notes Day 5 page 22

²⁸ Evidence of Mr Hamilton P10 Notes Day 5 page 9

²⁹ Town & Country Planning (Permitted Development Order) 1993 Document L12

concerned that consultation was automatic. The important matter is whether consultation should extend to other bodies or departments such as the Fire Department which expressed considerable concerns on consultation at Mount Murray, or the Society for the Preservation of the Manx Countryside and the Environment which must seek its own information about development proposals and is required to act through an Advisory Council which cannot seek a review or an appeal. These are matters considered later in the report.

vii) Special Inquiries and Call In

- 8.26 Power to provide for the holding of Special Inquiries into planning applications was, and is, provided by Part I of the Town and Country Planning Act 1981. The grounds for a calling in are set out in section 1(2) of Part 1 as being where there are “considerations of general importance to the Island which are relevant and require evaluation but a proper evaluation thereof cannot be made unless there is a Special Inquiry for the purpose...”
- 8.27 There is no reference to Special Inquiries in the 1982 Order and “considerations of general importance” are not defined in the Act itself. The Commission nevertheless takes the view that the economy of the Island is seen as one such consideration, particularly where there are conflicting concerns with respect to the environment and the 1982 Order. These seem very much to be the factors which the department would have needed to consider when the first outline application (PA 90/1842) at Mount Murray was received in January 1991.
- 8.28 Initiation of such a procedure may be by the Council of Ministers or by the department itself bringing a particular proposal to the Council’s attention. The Inquiry would be conducted by an independent Inspector from outside the Island with the decision being made by the Council of Ministers and then laid before Tynwald.³⁰ The Planning Committee itself has on limited occasions considered proposals for calling in, although not apparently at Mount Murray, and the evidence suggests that the Council of Ministers has been very reluctant to use this procedure.³¹

End of Section 8

³⁰ Evidence of Mr Kissack P3 Notes Day 2 page 7

³¹ Evidence of Mr Hamilton P10 Notes Day 5 page 29

