

9. THE ISLE OF MAN PLANNING SYSTEM – THE PLANNING SYSTEM 1992 TO DECEMBER 2000

i) Introduction

- 9.1 In broad terms there was little change in terms of the statutory base to the planning system up to the point when Professor Crow completed his report in December 2000.¹ There were some significant changes to the day-to-day operation of the system which are referred to below, but it otherwise remained the position that the role of planning authority in the Island was a function delegated to the Planning Committee or, under authority, to the Director of Planning, and that the department had responsibility for the formulation of planning policy and the control of development under the provisions of the relevant town and country planning legislation.
- 9.2 It also remained the case that the main development control procedures were as set out in the Isle of Man Planning Scheme (Development Plan) Order 1982, (as amended to the 1st April 1988). That 1982 Order was enabled, as we have seen in section 8, by the Town and Country Planning Acts of 1934 and 1981, which together with the 1991 Act, underpinned the system of planning in force at the time of the Mount Murray application. As noted,² the 1934 Act had the stated purpose of enabling schemes to be prepared and carried into effect for the development and planning of land and the 1981 Act provided for the holding of Special Inquiries into planning applications. The latter Act also provided for the establishment of an Advisory Council on planning and the environment, whilst the 1991 Act made provisions with respect to buildings and areas of special architectural or historical interest. All these Acts have subsequently been repealed by the Town and Country Planning Act 1999 although that repeal is not yet in full operation. This latest Act has the stated purpose of making new provision with respect to town and country planning, including the protection of buildings and areas of special architectural or historic interest and the control of advertisements; and for connected purposes.
- 9.3 The 1999 Act allows in effect for a comprehensive consolidation and review of the whole of the planning system, but much of that review depends upon the precise nature of secondary legislation required to implement the new regime which secondary legislation is, so far as Parts 2 to 5 of the Act are concerned, still to be formulated as to nature and content. Part 1 of the Act came into force on the 1st April 2000, and therefore was in force when Professor Crow reported. This Part of the Act deals with development plans, and is not really a topic which we consider calls for discussion flowing from the matters contained within Professor Crow's report. Matters with which we are particularly concerned are Part 2, development control, and Part 4, enforcement of control. Part 3 concerns special controls, and Part 5 has a number of miscellaneous and supplemental provisions. In these two latter Parts only section 40, concerning the involvement of outside organisations in planning, requires our attention.
- 9.4 However, within that general framework, a number of substantially improved procedures had been introduced by 2000. We refer to these in the remainder of this section. They might generally be regarded as standard practice in other jurisdictions and further change is needed, but, in the Commission's view, they have introduced some much needed elements of certainty and precision to planning procedures on the Island.

¹ Mr Hamilton Document P10 and Mr McCauley Document P12

² Paragraph 8.3

ii) **Standing Orders**

- 9.5 Standing Orders governing the exercise by the Planning Committee of any functions on behalf of the department were introduced as Government Circular No. 18/97 on 1st May 1997 under the enabling powers of the 1982 Order and the Government Departments Act 1987. The Circular indicates that the chairman should be a member of the department and sets out a requirement for a programme of ordinary meetings to be prepared at the beginning of each quarter.
- 9.6 Amongst other important features, Standing Order 5 (2) requires that, with certain limited exceptions, business which is not specified on the agenda cannot be transacted at a meeting of the Committee. Standing Order 8.1 (c) requires that the Committee cannot consider any application for planning approval unless it has before it an analysis of the proposed development and its effects prepared by a Planning Officer. While this has been an important movement forward we note that there is no requirement that the report should be in writing, nor a requirement that the report should be submitted to members for pre-meeting consideration. Standing Order 8.1 (d) requires that the Committee has before it a list of all the persons who have made objections and representations with respect to the application and a summary of the objections and representations made. These were clearly significant improvements. However, we also draw attention to Standing Order 13 which does allow a decision to suspend these two Standing Orders, 5 or 8, although only on the basis that all members of the Committee present assent and the decision made, with reasons, has to be recorded in the minutes. It is not entirely clear to us why such suspension is permitted by Standing Order 13, but it may have been considered necessary to cover unforeseen events, and there is the safeguard that the reasons for such action have to be explained and recorded.
- 9.7 The Circular does not refer to the size of the Committee except to require that a quorum shall be at least 2 members. In practice, the Committee remains small, most meetings in 2000, as in 1991, consisting of three members who continued to meet in private. There is a requirement that the Secretary of the Committee shall record the minutes, but no indication of whether such minutes should be made a matter of public record.
- 9.8 It may be noted that there were no predecessor Standing Orders to those introduced in May 1997, and it follows that they were not in force when the Mount Murray applications, so far as relevant, were being processed. Mr Hamilton has been Chief Executive of the Department of Local Government and the Environment since 1996. He introduced the Standing Orders because he believed them to be necessary for the efficient conduct of business on the Planning Committee.³ He told us that there was some resistance to Standing Orders being introduced.⁴ We find this not altogether surprising given some apparent lack of concern over the events of the 1990s which has been expressed by some of the participants. We find the introduction of these Standing Orders to have been a valuable contribution to the improvement of the planning process as they do meet several of the problems which arose in the planning permissions being considered in 1991.

³ Evidence of Mr Hamilton P10 Notes Day 5 page 6

⁴ Evidence of Mr Hamilton P10 Notes Day 5 page 6

iii) **Other Changes**

- 9.9 Reference has been made above (8.22) to the limited arrangements for delegation to the Chief Architect and Planning Officer as they existed in 1991. In paragraph 5.4 of his report Professor Crow did refer to delegations of functions to the Director of Planning, and in 5.5 he made suggestions on that. Mr Hamilton explained to us⁵ that he had introduced a proper system of delegation in 1997 as introduced and covered in Government Circular No. 14/97. He said that there was an earlier arrangement which he did not fully understand, but his new arrangement met those shortcomings.
- 9.10 The functions exercisable under this Circular applied to the then Director of Planning, Mr Vannan, and were those within paragraph 5 of the 1982 Order (initial decision) and the related paragraph 3(2) (power to decline to consider an application). This relatively wide remit was constrained by a number of exclusions covering, amongst other things, circumstances where the Director had had previous discussions with the applicant, interested persons or agents, or where he was instructed by the minister or where he considered an application should properly be determined by the Planning Committee. The Circular also required the Director to have specified items before him prior to considering an application which included an analysis of the proposed development prepared by a Planning Officer and a list of all persons making objections or representations and a summary of their content. It may be noted that delegated responsibilities have since December 2001 passed to the present Director of Planning & Building Control, Mr McCauley, under the provisions of Government Circular No. 57/01. The functions exercised under the Circular, however, remain the same.
- 9.11 In regard to other matters, the 1982 Order gave a statutory basis for the department to vary the terms of an approval, the scope of which has been referred to in paragraphs 8.13 and 8.14 above. Evidence was given to the Commission⁶ to the effect that it has for some time been the practice of the Planning Committee not to accept any amendments to applications which have already been the subject of consideration and a decision. (This change is now incorporated into the Development Control Handbook referred to in sub-section 18 (ii) below, which indicates that a Committee decision cannot be altered after the meeting is closed.) The Commission considers this to be a procedural and not a statutory change since the power to vary remains in the 1982 Order. However, some rationalisation of this position will no doubt be considered in due course as part of a new Order or Orders bringing into force Parts 2 to 5 of the Town and Country Planning Act 1999.
- 9.12 Such a change is essential, in the Commission's view, and should be incorporated into statute at an early date. Taken together with the other changes in the Development Control Handbook, to which we refer later, it would largely overcome the confusion in the department over amended Mount Murray plans which Professor Crow identified in 2000, and would avoid situations arising where amendments to approvals were sought and granted which led to developments which neighbours and others might have objected to had the amendments been included in the original applications.⁷
- 9.13 One further change should be referred to here. In May 1997, the Chief Secretary issued from the Office of the Council of Ministers a confidential document entitled "A Corporate Government Approach to Planning Proposals". This document, which was

⁵ Evidence of Mr Hamilton P10 Notes Day 5 pages 8 & 9

⁶ Miss Corlett Document Q13 paras 2.2 to 2.8 and Mr Sinden Document Q12 paragraph 2.4

⁷ Evidence of Miss Corlett Q13 Transcript Day 10 page 102

approved by the Council of Ministers, envisaged a procedure for resolving differences between departments, and in our judgement, was entirely sensible. It seems to us appropriate that similar procedures should also be in place in respect of the situation where the proposal is not necessarily by a government department itself, but is a proposal which creates divergence of views between government departments as to whether and how such proposals should be implemented. The procedures should advise that, in the event of continuing differences, the matter should be brought to the attention of the Council of Ministers, and indeed in instances of there being major development proposals of Island significance, then such proposals should in any event, be brought to the attention of the Council of Ministers as a matter of settled procedure. We refer to this point later in our recommendations.

- 9.14 The above sets out the position when Professor Crow reported, insofar as legislative and procedural requirements are concerned.

End of Section 9